# *United States Court of Appeals*
# *for the Second Circuit*

# TRANSCRIPT

[redacted]

B

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

74-1194

ROBERT L. WOLF,

Defendant-Appellant.

COMPLETE TRIAL TRANSCRIPT

74-1194

UNITED STATES COURT OF APPEALS
FILED
MAY 3 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

mcds

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------x

UNITED STATES OF AMERICA,

-vs- 73 Cr. 486

ROBERT L. WOLF,
Defendant

-----------------------------------x

Before:

HON. INZER B. WYATT,
District Judge

New York, New York
November 13, 1973--10:00 a.m.

APPEARANCES:

PAUL J. CURRAN, ESQ.,
Unites States Attorney
for the Government
BY: BOBBY C. LAWYER, ESQ.,
Assistant United States Attorney,
of Counsel

MURRAY APPLEMAN, ESQ., and
MAX FRUCHTMAN, ESQ.,
Attorneys for Defendant

[In the robing room]

THE COURT: I amttold that the defendant wishes to make a statement and I thought it better to take it in here because the jury panel has already arrived.

THE DEFENDANT: Your Honor, I petition and apply to the Court for an adjournment of 30 days in order to secure the services of the attorney which I desire, because in addition to the issues and events described when I last came before your Honor the following occurances and circumstances have intervened:

Mr. Arnold Wallach, the legal associate to Mr. Appleman, with experience in criminal law resigned yesterday and will not be present as scheduled. An outside accountant was first engaged only three days ago. The representatives of the defense have not interviewed the defendant's accountant nor bookkeeper. They have not consulted the witnesses familiar with the defendant's matrimonial and custodial difficulties for information relevant to this case.

With deference, your Honor, I ask for this brief adjournment.

THE COURT: Doctor, I regret that I am unable to grant any adjournment, as I indicated the other day. Now, how do you want to proceed? Do you want to act as your own lawyer or do you want Mr. Appleman to act for you?

THE DEFENDANT: I will let Mr. Appleman act for me.

THE COURT: We will go along then.

MR. LAWYER: If it please the Court, prior to the apparent confusion over representation of Mr. Wolf, Mr. Appleman and I had agreed to enter into certain stipulations. Because of the events that have transpired between him and his counsel I am advised that he no longer can enter into certain stipulations. He feels that it is not in his interest as counsel insofar as his relationship with Mr. Wolf is concerned. One of those stipulations which we never really agreed upon and which we thought we would come to some agreement on was as to photographic copies of certain bank records. There will be a voluminous number of bank records such as deposit slips and cancelled checks. Overnight the Government prepared a legal memo. I regaret to say that I only got it from the steno pool a few minutes ago without backs.

In cases where we are able to obtain original records we did obtain them. They are not segregated and put in the order which the copies that the Government has are, but in most cases they will be available if Mr. Appleman wants to go thru them. I will ask that there be admitted certain photographic copies.

THE COURT: Yes. In other words, you are going to ask that copies be received in evidence but the originals are available for the Doctor's inspection and Mr. Appleman's inspection?

MR. LAWYER: Yes.

THE COURT: Will we get to that today?

MR. LAWYER: We might.

THE COURT: I will try to look at this meanwhile.

MR. APPLEMAN: I have just received certain statements pertaining to the accountant. I understand that the accountant will be the first witness. I would request that prior to the accountant being called as a witness that I be given 15 minutes or half an hour to read these statements. I read all the other statements yesterday from Mr. Lawyer pertaining to witnesses with regard to patients of Dr. Wolf. However, either by inadvertence or otherwise I did not receive a statement of the accountant and I assumed that the accountant would probably be among the last to testify. I was not too concerned at that time. However, Mr. Lawyer has informed me this morning that the accountant, due to his age, would be among the first to testify, so it would be appreciated if I could have a 15 or 20 minute recess to read the statements of the accountant in order to prepare.

MR. LAWYER: This is 3500 material, your Honor.

I turned over some yesterday and prior thereto and I turned over that particular witness's 3500 material this morning.

THE COURT: You want that time at the end of the direct, I assume.

MR. APPLEMAN: At anytime I would appreciate it.

THE COURT: I would think that really you would be better off if you did it at the end of the direct because you will have not only the statement but you will know what the testimony will be. I would be disposed to grant you that. Just don't let me forget.

MR. APPLEMAN: I will try not to, sir. Thank you.

THE COURT: All right.

[A jury and two alternate jurors were duly impaneled and sworn]

THE COURT: Now I think we will ask the members of the jury to go to our jury room, which is here in the corner. This is not the finest courtroom in the building but it is all that we have. You can perhaps find it convenient to leave some of your things in the jury room and then after a few minutes we will resume.

Mr. Clerk, would you show the members of the jury to their jury room?

[The jury left the courtroom]

[Recess]

[Jury present]

THE COURT: Now, members of the jury, for planning purposes let me say something about our normal hours of court. We begin in the morning at 9:30 and we will sit until a quarter to 1:00 and we will have a luncheon break from a quarter to 1:00 until 2:00 o'clock. We will sit then until 4:30. I would ask you to please try awfully hard to be punctual. Unless everybody is here nobody can get started and therefore I would ask you specially to try to be here at 9:30 tomorrow morning and at 2:00 o'clock when we resume.

Now, sometimes despite the fact that you are here and are punctual, sometimes we may not start on time and I want you to know the reason for that. It is not that I am not here or that the lawyers aren't here or the defendant isn't here. It doesn't happen often, but sometimes there are questions of law to be discussed between me and the lawyers and I should further explain that we almost always do that outside the hearing of the jury. So that if when you are all here at a specified time if you find the Court still doesn't start on time, you can assume that we are working on questions of law. I don't think it will happen very often.

Now, why do we discuss questions of law outside the hearing of the jury? The reason is in the differing function of the jury and the Court. You, the jury, decide all issues of fact and, of course, I decide all issues of law and at the end of the case will give you my instructions and explanations as to the applicable law, what is generally called a charge, the charge to the jury, which is simply an explanation and an instruction as to the principles of law.

Now, we believe, and it has been the belief for a long, long time, that if arguments of law between Court and counsel were conducted within the hearing of the jury it would divert the jury from issues of fact into issues of law and interfere with the performance of the essential functions of the jury. That is the theory on which it is done.

B2

As I say, it isn't because there are any secrets. Sometimes you may find the Court conferring with counsel at what is called the side bar, either here or here [indicating] out of the hearing of the jury. Again it is for the same reason. We are talking about law points and we don't want to divert the attention of the jury.

Now, members of the jury, each juror has a foreman and under our practice the foreman is always arbitrarily that juror who occupies seat No.1, which is the seat in the front row nearest the bench, so Mr. Gardner will be your foreman.

The jurors, of course, can talk amongst themselves about any subject except the case on trial and during the trial the jurors, of course, should never discuss the case with anybody who is not a member of the jury, but until you retire to deliberate you should not discuss the case amongst yourselves and let me give you the reason for it. Whether these reasons are good, we can't really tell, but they have been adhered to for many, many years and we believe them to be sound. The reason jurors should not discuss the case amongst themselves while the trial is going on is that the jury should keep an open mind until the jury has heard all the evidence and has heard my instructions and explanations of the applicable law, and it is believed that if the jury discussed the case amongst themselves as it went along it would interfere with keeping an open mind until the end of the case. That is the reason for it.

Now, I think it would be helpful to the jury as the case begins if I were to read you the indictment. It is the indictment which makes the charges against the defendant. The defendant has pleaded not guilty, but you should have in mind the charges. Now, you will find that there are a number of figures of dollars and cents as to the taxable income reported, that is, the Government's or the indictment's statement as to the actual taxable income of the defendant. The indictment charges, of course, that the actual taxable income is much more than the taxable income reported.

I don't think I will read all these exact figures because you can't remember them and you shouldn't, and at the end of the case when you are deliberating I am going to give you a copy of the indictment.

"The grand jury charges: On or about each of the dates hereinafter set forth in the Southern District of New York, Robert L. Wolf, the defendant, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by himself to the United States of America for the calendar years 1966, 1967, 1968 and 1969 by preparing and causing to be prepared, signing and causing to be signed, mailing and causing to be mailed an filing and causing to be filed with the District Director of the Internal Revenue Service for Manhattan, New York, New York, a false and fraudulent income tax return on behalf of himself wherein it was stated that his taxable income for each respective calendar year was the amount hereinafter set forth and that the amount of income tax due and owing thereon was the amount hereinafter set forth, whereas as said defendant then and there well knew, his taxable income for each respective calendar year was approximately the amount hereinafter set forth upon which there was due and owing to the United States of American an income tax of the approximately amount hereinafter set forth."

And then follows count one for the calendar year 1966, count two for the calendar year 1967 -- And for each calendar year the income tax return was filed in April of the succeeding year -- Count three, 1968, and count four is 1969. As I said, the figures are set forth in the indictment but I won't read them and, as I said, at the end you will have a copy of the indictment during your deliberations.

I have read the first four counts. Now, counts five thru eight:

"The grand jury further charges on or about each of the dates hereinafter set forth in the Southern District of New York, Robert L. Wolf, the defendant, unlawfully, willfully and knowingly did make and subscribe United States individual income tax returns for the calendar years 1966, 1968, 1968, 1969 respectively, which returns were verified by a written declaration that they were made under the penalties of perjury and were filed with the District Director of the Internal Revenue Service for Manhattan, New York, New York, and which returns he did not believe to be true and correct as to every material matter; namely, the amount of said defendant's gross receipts shown on Schedule C of said returns reported therein whereas Robert L. Wolf then and there well knew the true gross receipts for Schedule C of said returns were in excess of the respective reported amounts as follows," and then count five the calendar year 1966, count six the calendar year 1967, count seven the calendar year 1968 and count eight the calendar year 1969.

Now, I repeat, ladies and gentlemen of the jury, that an indictment is an accusation, it is a charge. It is not evidence of the guilt of the defendant. The defendant has pleaded not guilty and that raises the issues here to be tried.

I also repeat that the Government has the burden of proof to establish the guilt of the defendant as to each count beyond a reasonable doubt and because the Government has the burden of proof the Government is permitted to make the first opening statement to the jury to be followed, if the defendant elects, by an opening statement on behalf of the defendant, and because the Government has the burden of proof the defendant makes the first closing argument to the jury and the Government makes the last closing argument to the jury.

All right, Mr. Lawyer, would you address the jury?

MR. LAWYER: Thank you, your Honor.

May it please the Court, Mr. Appleman, Mr. Gardner, members of the jury:

My name is Bobby Lawyer. I am an Assistant United States Attorney for the Southern District of New York. My colleague at the Government's counsel table is Richard J. Weisberg. He is a lawyer employed by the United States Attorney's office also. It is our job to present the evidence in this case on behalf of the Government of the United States.

This is a tax evasion case. The defendant is Dr. Robert Lawrence Wolf. He stands accused by way of an indictment filed by a grand jury of eight separate crimes arising under the Federal income tax laws. You are in Federal Court. We are only concerned with Federal taxes, not with State, not with City taxes.

My purpose at this point in these opening remarks is to give you an overall view of the trial; that is, what you will hear from witnesses on the witness stand, what you will see insofar as any exhibits that may be admitted into evidence. Nothing that I am saying now, nothing that I say in my closing remarks to you at the end of the case, nothing Mr. Appleman may say to you in his opening or closing remarks is evidence. The only evidence is what witnesses say, that is, witnesses who take the stand and who swear to tell the truth. The evidence also consists of any of the physical documents that you may see which may be received into evidence, as I stated before.

B3 This will not be a difficult case. It is a tax evasion case, but not especially hard. A trial is something like a jigsaw puzzle and by that I don't mean it is neccessaily difficult, but it comes in in bits and pieces. You hear a witness today, you hear another witness tomorrow, you see a piece of paper with this witness, you see another piece much later on. In short, the evidence comes in at different times and only when the trial is completely over do you get the full picture. That is very much like a puzzle, and the whole thing is completed only when you have the whole picture. That is the purpose of my remarks, just to give you an overall, bird's-eye view of the what is to come so you will understand it better.

Robert L. Wolf is a medical doctor licensed in the State of New York as well as in other states. At all times relevant to this trial he was associated with Mt. Sinai Hospital where he was an assistant attending physician. He was also on the faculty of the Mt. Sinai School of Medicine where he did research and taught. But more important for our purposes, Dr. Wolf had a separate office practice, that is private patients who he treated at his office here in Manhattan in the East 70's.

The eight counts of this indictment pertain primarily to his income that he received from patients in his office practice on East 74th Street. We are not so much concerned with any income he received from Mt. Sinai except insofar as we plan to show the total amount of money he paid from all sources. The tax years with which we will be concerned are 1966, 1967, 1968 and 1969.

Let us now refer to the first four counts of the indictment. When I use the word count, by the way, I am only referring to what is lawyer's language for a separate charge or crime. You have to consider each count separately. That is, you have to bring in a verdict of guilty or not guilty on each of these separate eight counts. One does not affect the other. In counts one thru four Dr. Wolf was indicted for attempted evasion of his taxes. I also point out that lawyers use the words "attempted evasion" and "an evasion" interchangeably, so when you hear someone say attempted evasion or just simply an evasion, we mean the same thing.

Count one refers to the calendar year 1966. Count two refers to 1967, count three refers to 1968 and count four refers to 1969.

How much money are we talking about? How much in taxes does the prosecution contend Dr. Wolf evaded for those four years?

We will prove that the amounts for each year was substantial. We will prove that for 1966 Dr. Wolf reported a taxable income of less than $11,000.; that he paid a tax of just a little over $2,200. whereas in fact his actual taxable income for 1966 was in excess of $35,000., and that he should have paid a tax of not less than $13,000.

We will prove that for 1967 Dr.Wolf reported a taxable income of less than $5,000.; that he paid a tax of only $791.92, whereas in fact for 1967 he had an actual taxable income of not less than $27,000. on which he should have paid a Federal income tax of not less than $9,000. if he had reported his true taxable income.

For 1968 and 1969 Dr. Wolf reported less than $13,000. and less than $4,000. respectively. For 1968 he paid less than $3,000. in taxes. For 1969 he paid $666.88.

We will prove that he had not less than $54,000. in actual taxable income for 1968 and he had not less than $46,000. in actual taxable income for 1969.

All of the figures which I have just given to you, by the way, are approximations. The proof as to unreported income and as to taxes owed on the unreported income will all be rounded off figures. We are not required, as the

Judge will tell you in his closing charge to the jury, to prove that we have accounted for every penny. We only have to get approximations. The figures are rounded off in the indictment and they will be rounded off as the evidence comes in. However, I will point out and you will hear from witnesses on the stand that the figures insofar as they are approximated and are rounded off were always computed in favor of the defendant. In fact, we charge him with less, the proof will show.

The Government will prove that for each of the four years concerned Dr. Wolf did not report all of his income from his office practice. I am making a distinction between professional income from private patients in his office and whatever income he may have had from other jobs such as his job at the hospital. Whenever he did this we will prove that he was acting willfully and, in short, that he was acting deliberately and consciously.

Before I tell you some of the specific evidence, let me tell you about the other four counts, that is counts five thru eight. Counts five thru eight are not as such tax evasion or attempted tax evasion counts. Those counts are what we call, in shorthand form, false statement or false declaration counts which simply mean that Dr. Wolf is accused in those four counts with making false statements on his tax returns. Those relate to the four counts only in the sense that we are talking about the same four years that he made the false statements in the tax returns. Those false statements, as will be shown from looking at the returns themselves, were made under penalty of perjury. All of you have paid taxes before, that is, at least you have filed the returns every April, and at the bottom of the return you will recall that there is a printed statement on the form which is above the space where you affix your signature and the statement reads, in substance, that by signing the form you are swearing or subscribing to the fact under penalty of perjury that the information in the return is true, is accurate, is complete to the best of your knowledge and belief. It is that statement which we contend is false in Dr. Wolf's case because when he signed the return he knew, he was very conscious of the fact that he had not made those returns out correctly.

B4 What will the other evidence be? First of all, we will show that the four returns in question were all individual, that is, in the sense of personal returns as distinguished from joint returns that you file with someone else. That is, you and your wife or, I mean, you and your spouse may file a joint tax return. In this case Dr. Wolf filed his own individual return. The returns were prepared in Manhattan. They were signed in Manhattan. They were mailed from Manhattan. Included among the witnesses will be a certified public accountant by the name of Mr. Benjamin Edelstein. Mr. Edelstein prepared Dr. Wolf's tax returns for the years in question. He will tell you how he prepared the returns; that is, how he came about to prepare them. He will state that the information included in the returns was given to him by Dr. Wolf. He will tell you that Dr. Wolf did not give him any of his original books, that is, receipt books or patient books, any logs, but rather Dr. Wolf provided Mr. Edelstein with handwritten sheets in each of the years. Whose handwriting those sheets are in we don't necessarily know and it isn't necessary to prove it, but, in any event, the important point is that Mr. Edelstein did not himself compile the information from which he made out the tax returns for the four years but rather whatever went into the tax returns, whatever he wrote into the return or had physically written into the return by someone working for the accountant was provided by Dr. Wolf. He provided other papers as to stock transactions. You will see these other papers. The Judge will tell you -- He gives you the law -- that it is no excuse if someone prepares the return. If Dr. Wolf provided the information and the information was false, then, as the proof will show, the accountant or any other person who may have prepared the return is not guilty of anything. The person who gave him the information is the one who is guilty. In fact, the evidence will show that the information was provided by Dr. Wolf. But the bulk of the evidence in this case will come thru information pertaining to various bank accounts that Dr. Wolf had. When he gave the information to Mr. Edelstein, the CPA -- And, of course, all of you know, I'm sure that CPA, which we will sometimes use for short, means certified public accountant -- I might add that we might also from time to time use the initials IRS simply meaning Internal Revenue Service. The information which Dr. Wolf provided for Mr. Edelstein primarily referred to a single bank account which is the Chemical Bank checking account in the vicinity of Dr. Wolf's office. Dr. Wolf in general insisted that his taxable receipts, that is his checks from patients, his income, was put into that Chemical Bank checking account. On various occasions during the investigation of this case, Dr. Wolf repeatedly denied that he put taxable income, that is receipts, in any other banks.

Now, you will hear from Internal Revenue Service agents who did an investigation and who discovered that Dr. Wolf indeed did have other bank accounts and that receipts went into those bank accounts. Dr. Wolf had a separate savings account at that very same Chemical Bank at which he had his checking account. He had a savings account with the Bank of New York. He had a savings account with the Bankers Trust Company. He had a checking account with Barclays Bank of New York whose head offices is in London.

Dr. Wolf also had, and this I ask you to watch for, a bank account in a Swiss bank in Zurich which he didn't tell anyone about. He used the Barclays Bank to make transfers of money from New York and out of this country into Switzerland into his numbered account which he kept secret from the Government and from Mr. Edelstein until he was confronted by the fact that we were well aware of his bank account, at which time he did subsequently concede that he had this bank account. He did deny, however, that any taxable income was going into that account.

There will be other evidence. There will be lots and lots of paper. There will be checks, checkbooks, check stubs, deposit slips. You will hear from some of Dr. Wolf's patients. By no means will you begin to hear all of his patients. You will just hear a sampling and we will trace some of the money from that sampling of patients into some of these bank accounts. You will see that it was not reported in the Chemical Bank account and it was not reported at all as taxable income.

You will hear from Internal Revenue Service agents who investigated the tax returns. These agents will go thru the computations to show you how they arrived at the various figures included in the indictment as to how much taxable income Dr. Wolf did not in fact report and what his taxes would be if he had reported on that income.

The method by which the computations were made is called the bank deposits method. I will give you an example of how this works. You take a taxpayer who has several bank accounts. You look at those bank accounts, determine how many deposits he has made to all of those various accounts for a given tax year. You add up the amount of those deposits. You get a grand total. Then you reduce that amount by non-taxable items, such as you may have medical expenses. You may have gotten a loan that isn't taxable. You may have gotten a gift or an inheritance that isn't taxable, so you must reduce, as you do each year on your own returns if you take deductions, you must allow for the deductions and the figure that is left over is considered taxable income in a situation where you have a person who has a job which produces income. That is circumstantial evidence. Judge Wyatt will explain that to you more fully as the trial proceeds.

You will get an opportunity to see, and we will go thru with you many of the charts and schedules on big graph paper that the Internal Revenue Service agents prepared and you will see that the overwhelming total of the various documents, that is, the checks with which we are concerned that went into Dr. Wolf's various bank accounts, were of nice rounded sums that have the inherent appearance of patients' fees and you will hear some of the patients and you will be able to see these various records and I am sure that when the case is over you will be absolutely convinced that those hundreds of checks, those thousands of checks were in fact fees from patients and that they were not reported.

B5

This case really will be simple. We are talking about tax evasion. I can imagine that some of you when you heard tax evasion said "My God, what do I know about taxes?" You don't have to know a lot about taxes. This is really not a tax case. It is a criminal case with tax dimensions to it. There will be charts. There will be papers. There will be a lot of numbers thrown out. You don't have to know about that. The arithmetic will be done for you by the witnesses on the stand. You will look at the end result, the approximate figures as well as the underlying evidence.

We only ask for your attention. The Government has the right to a fair trial and the defendant certainly has a right to a fair trial. I am sure you are going to give this to both of us.

This case will be relatively short, several days at most. I am sure you will give it your attention. It may be difficult at times in this courtroom with both the BMT and the IRT passing right underneath the courtroom which may make it a little difficult to hear from time to time.

I am sure that by the time the case is over you will be totally convinced that Dr. Wolf is guilty on all eight counts of the indictment as charged and you will not hesitate to return a verdict of guilty on count one, count two, count three and count four and the other remaining counts. Thank you.

THE COURT: Mr. Appleman do you wish to address the jury?

MR. APPLEMAN: Yes, your Honor.

THE COURT: You certainly may.

MR. APPLEMAN: Your Honor, Mr. Lawyer, Mr. Gardner, ladies and gentlemen:

As the Judge has told you at the inception, there is no duty on my part to come forward at this time. However, after listening to Mr. Lawyer I fear that I must explain certain items.

Mr. Lawyer is a Government attorney. He represents the Justice Department. In other words, he represents you, he represents I, he represents the People and for sure Dr. Wolf.

In his presentment to you he must show that beyond any reasonable doubt it was Dr. Wolf's intention to defeat and evade payment of his tax. We in this country do not throw people into jail for that. If that was the case the Internal Revenue Service would have a plethora of criminal cases with regard to deficiencies on income tax returns filed with them.

The question is not how much money Dr. Wolf owes the Government, be it $5., $5,000., $50,000. or $5,000,000. The question involved here is did Dr. Wolf willfully and intentionally desire to defeat and evade the payment of his tax. This is the question you must answer.

Mr. Lawyer here represents the most powerful litigant in the world, the United States Government. They have all the resources at their command to obtain evidence for and against all taxpayers. As a matter of fact, it is their duty to obtain all evidence no matter which way it falls. You will find that the testimony of witnesses will be presented to you by the Government, but I must caution you that that testimony also includes cross-examination which this defendant is entitled to. That is the evidence in this case.

If at this time it cannot be shown that Dr. Wolf willfully and with knowledge attempted to defeat and evade tax that would have no bearing at all with regard to his tax liability. As was said when this case started, we do not wish to send anyone to jail solely for debt. There must be a willful and intentional design to defeat and evade payment of his tax.

I am certain that after all the evidence is presented, including cross-examination which I ask you to pay close heed to because we are dealing here not with a debt but with the freedom of a man who right now is subject to possibly going to jail --

THE COURT: I think I have to tell the jury, Mr. Appleman, that the jury is not to consider speculating about -- If there should be a conviction the responsibility is solely on the Judge.

MR. APPLEMAN: I am sorry.

THE COURT: That is pefectly all right, but the jury is only concerned with guilt or innocence.

MR. APPLEMAN: Guilt or innocence beyond any reasonable doubt.

THE COURT: That is right.

MR. APPLEMAN: This is your sole criterion. Thank you.

THE COURT: The Government will call its first witness.

MR. LAWYER: Benjamin Edelstein.

[continued on next page]

BENJAMIN D. EDELSTEIN, called as a witness in behalf of the government, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Mr. Edelstein, are you a certified public accountant?

A Yes, I am.

Q In what state are you licensed?

A New York.

Q How long have you been a CPA, sir?

A 1947.

Q Where are your offices located?

A In the Empire State Building, 350 Fifth Avenue.

Q Are you personally acquainted with a person by the name of Robert L. Wolf?

A I am.

Q Do you see that person in court?

A Can't see.

MR. LAWYER: May the witness come down from the stand, your Honor?

THE COURT: Yes, of course.

A Right there (indicating).

You lost a lot of weight.

THE COURT: All right, the record may show that the witness has identified the defendant.

Q Approximately how long have you known Dr. Wolf?

A Well, let's see. About eight or nine years. I'm not too sure about that.

Q Have you acted as his accountant on various occasions?

A I have.

Q What specifically have you done for him in that regard?

A I have made out his yearly income tax return.

Q For what years?

A 1966 to 1972.

Q Mr. Edelstein, I ask you to look at Government Exhibit 1 for identification which I have just placed before you. Do you recognize that, sir?

A I do.

Q What is it?

A It is a copy of the 1966 federal income tax.

Q Is your signature on Government Exhibit 1, sir?

A It is.

Q Would you point it out? Where is it physically?

A Right here.

MR. LAWYER: May the record reflect that the witness identified the lower left-hand corner of Government Exhibit 1?

THE COURT: Yes.

That is a copy, not the original; is that so?

MR. LAWYER: Yes.

THE COURT: But is signed?

MR. LAWYER: Yes. It is signed -- it is not an original signature on the return. That is a Xerox of a signature as well.

THE COURT: It is a process copy?

MR. LAWYER: Yes, sir.

THE COURT: All right.

Q Mr. Edelstein, I ask you to look at Government Exhibit No. 2 for identification which has been placed before you. Do you recognize Government Exhibit 2, sir?

A Yes, I do.

Q What is Government Exhibit 2?

A A photostat of a 1967 federal income tax.

Q For what person?

A Robert Wolf.

Q Is your signature on that return, sir?

A Yes, it is.

THE COURT: Mr. Lawyer, are these processed copies of the original?

MR. LAWYER: Yes, sir.

THE COURT: All right.

MR. LAWYER: The government will present the originals.

THE COURT: The original was filed. These are process copies.

MR. LAWYER: Yes.

THE COURT: All right, I just wanted that for identification.

Q I show you Government Exhibit 3 for identification which has been placed before you. Can you identify that, sir?

A I can.

Q What is it?

A The process copy of the 1968 federal income tax of Robert Lawrence Wolf.

Q Is your signature on that return, sir?

A It is.

Q Where is it?

A Right here (indicating).

Q That is in the lower right-hand corner, sir?

A That is right.

Q I ask you to look at Government Exhibit 4 for identification which has been placed before you. Can you identify that, Mr. Edelstein?

A I can.

Q What is it?

A It is a photostat copy of a 1969 federal income tax return of Robert Lawrence Wolf.

Q Is your signature on that return, sir?

A It is.

Q That is in the lower right-hand corner?

A That is right.

Q In what capacity did you sign the returns, sir?

A Will you repeat that question?

Q In what capacity did you sign those returns?

A What do you mean? I don't understand "what capacity." As the preparer of the return.

Q That is what I mean, sir.

Thank you.

Did you prepare the returns personally, that is, yourself?

A Well, offhand I don't remember. It might have been two or three of them. I can tell by the handwriting. But they were prepared by somebody employed by me.

Q Did you check each one of the returns, in any event?

A That is right.

Q Prior to signing?

A That is right.

Q Will you tell us what procedure you went through insofar as the information you put on the returns? How did you obtain it?

A Dr. Wolf presented me with work sheets of the various expenses and income from those sheets I prepared the return.

Q How did this information get to you physically?

A Well, there was -- it was brought down by him personally or by his secretary.

Q Was that the case for each of the four years?

A As far as I can remember, yes.

Q Was the information always in writing, sir?

A Yes, sir.

Q Did you retain or keep file copies for yourself of the information which Dr. Wolf provided?

A I kept the original, copy of the original.

Q Mr. Edelstein, I show you Government Exhibit No. 11 for identification. Do you recognize Government Exhibit 11, sir?

A Yes, I do.

Q What is it?

A It is the worksheets for 1966 and 1967 tax returns.

Q Is this Government Exhibit No. 11 your folder?

A That is right.

MR. LAWYER: May the record reflect, your Honor, that Government Exhibit 11 is simply a folder. It is a file jacket.

THE COURT: Yes.

Q I ask you, Mr. Edelstein, to look at Government Exhibit 11-A for identification which I just took out of Government Exhibit 11. What is Government Exhibit 11-A, sir?

A It is the work sheets for the 1966 return.

Q Where did you get that from?

A From Dr. Wolf.

Q I ask you to look at Government Exhibit 11-B for identification which was just removed from Government Exhibit 11. What is Government Exhibit 11-B, sir?

A These are the work sheets for the purchase and sale of stock.

Q Where did you get Government Exhibit 11-B?

A I got the information from him, but that is my writing on it, on the sheets.

Q But you got the information from Dr. Wolf?

A That is right.

Q I ask you to --

A As a matter of fact, you have the brokerage sheets -- he brought the sheets -- right in the folder.

Q Did you say, sir, "As a matter of fact, you have the brokerage sheets here in the folder"?

A That is right.

Q Are you referring to Government Exhibit 11-D for identification?

A That is right.

Q I ask you to look at Government Exhibit 11-C for identification, sir. Can you identify that?

A Where is that?

Q Here (indicating).

A This is the schedule of exchanges and loans advised by Dr. Wolf for the year 1966.

Q Whose writing is that?

A That is my writing.

Q Where did you get the information from?

A It indicates advised by Dr. Wolf.

THE COURT: Mr. Edelstein, let's go back to Exhibit 11-B. Tell us again what that is.

THE WITNESS: That is a schedule the purchase and sale of securities.

THE COURT: Securities, purchases and sales?

THE WITNESS: That is right.

2 THE COURT: And Schedule 11-C you say is a schedule of exchanges and loans?

THE WITNESS: That is right.

THE COURT: What does the word "exchanges" mean?

THE WITNESS: It means loans and exchanges, money that he borrowed or money that he returned; butthis is is money that he borrowed for the various dates for that year.

THE COURT: I am just stuck on the word exchanges.

THE WITNESS: That is a phrase we use in accounting, loans and exchanges. In other words, they apply for loans received and loans paid out. This particular case is for loans received.

THE COURT: So there aren't any exchanges in the schedule?

THE WITNESS: Well, not -- no, but that is -- we use that phrase.

THE COURT: I understand. But in this particular instance it is a schedule of loans?

THE WITNESS: That is right.

THE COURT: All right. Now 11-D, what is that?

THE WITNESS: These are photostats of the broker's statements of the purchase and sale of securities.

THE COURT: So 11-D supports 11-B?

THE WITNESS: Right.

THE COURT: All right.

THE WITNESS: That is right.

THE COURT: Thank you.

Mr. Lawyer, you may go on.

Q Mr. Edelstein, do you recognize the name William Mc Guire?

A Yes, I do.

Q Who is he?

A He was the Internal Revenue Agent who made an audit.

Q Directing your attention to December of 1969, did you speak with him about this audit at that time?

A He was up in my office so I must have spoken to him.

Q I ask you to look again at Government Exhibit 11-C for identification. Tell us whether or not you showed that information to Mr. Mc Guire.

A I assume I did.

MR. APPLEMAN: I object to the answer.

THE COURT: Yes, I will sustain the objection.

Q Did you have a conversation with Mr. Mc Guire on that occasion, sir, when he was in your office?

A Yes.

Q Did he ask you for information concerning loans of Dr. Wolf?

A Yes, he did.

Q Where did you get that from?

A You see, I have to remember that. I gave him this information, sir, purposely -- I made this schedule for certain purposes and he audited in 1966, so I assume he got this information.

MR. APPLEMAN: Your Honor, I will object to that.

A I can't remember these things for four years. I didn't prepare this unless I had a reason for it.

MR. APPLEMAN: Your Honor, I still object to that.

THE COURT: Yes, the answer "I assume" I showed it to him I can't let stand.

THE WITNESS: I say I showed it to him. He made the audit. I showed it to him then.

THE COURT: That is your best recollection?

THE WITNESS: That is right.

THE COURT: That answer may --

THE WITNESS: Recollection or assume, that is, what is the difference?

Q You are referring to Government Exhibit 11-C?

A Yes.

THE COURT: So you showed 11-C to Mr. Mc Guire?

THE WITNESS: Yes.

THE COURT: Where did you get the information on 11-C?

A From Dr. Wolf.

MR. LAWYER: The government offers 11-A, 11-B, 11-C and 11-D in evidence.

THE COURT: Show them to Mr. Appleman.

MR. LAWYER: May the record also reflect, your Honor, that Mr. Appleman was given copies of these earlier.

MR. APPLEMAN: No objection.

THE COURT: All right, mark them, Mr. Clerk.

xx (Government Exhibits 11-A, 11-B, 11-C and 11-D were received in evidence.)

MR. LAWYER: I request permission to allow the jury to see these.

THE COURT: Mr. Lawyer, you can read some part of it, but, frankly, to show this mass of material to the jury --

MR. LAWYER: I withdraw the offer.

THE COURT: You certainly can argue from it in summation, but it looks to me as if there are a great many sheets and I think it is --

MR. LAWYER: Very well, your Honor. I withdraw the offer.

THE COURT: All right.

Q Mr. Edelstein, I ask you to look at Government Exhibit No. 12 for identification, sir. Can you identify that, sir?

A Yes.

Q What is it?

A It is a letter addressed to me. Do you want me to read it?

Q No, sir.

Where did you get the letter from?

A Dr. Wolf.

Q When, approximately?

A The letter was dated March 18, 1968.

Q Do you recognize the signature on the back side of the letter, sir?

A I do.

Q Whose signature is it?

A Dr. Wolf's.

Q I show you Government Exhibit 12-A for identification. Can you identify that, Mr. Edelstein?

A That is the work sheets for 1967.

Q Where did you get those work sheets from?

A Dr. Wolf.

Q Whose handwriting is there on Government Exhibit 12-A, sir?

A Dr. Wolf's. The only thing -- I'm sorry. It is all Dr. Wolf's.

MR.APPLEMAN: Please ask the witness to speak up, your Honor.

THE COURT: Yes. Mr. Edelstein, please keep your voice up so that the farthest juror and the gentlemen at the tables can hear you.

THE WITNESS: Yes. It is Dr. Wolf.

THE COURT: Mr. Reporter, would you read the question and answer?

(Record read.)

THE WITNESS: That is right.

Q When you say "It is Dr. Wolf's," sir, do you mean you know that or do you mean it is not yours?

A Well, I'll say it is not mine. Let's put it that way.

Q I show you Government's Exhibit 12-B for identification. Do you know what schedule 12-B is?

A It is a schedule for capital gains securities, capital gains of securities for 1967.

THE COURT: Of capital gains?

THE WITNESS: Yes.

THE COURT: A schedule of capital gains, 1967?

THE WITNESS: Yes, sir.

Q Where did you get that, sir?

A Dr. Wolf.

Q Did Government Exhibits 12-A and 12-B both come from your file referring to Dr. Wolf for 1967?

A That is right.

MR. LAWYER: The government offers 12, 12-A and 12-B, your Honor.

THE COURT: All right. Show them to counsel.

MR. LAWYER: May the record also reflect that counsel was given copies of these documents earlier.

THE COURT: Yes.

MR. APPLEMAN: No objection.

THE COURT: All right, mark them.

xx (Government Exhibits 12, 12-A and 12-B were received in evidence.)

THE COURT: May I see Exhibit 12, please?

(Pause.)

THE COURT: I am returning Exhibit 12.

MR. LAWYER: Your Honor, may I have permission to read a portion of Government Exhibit 12?

THE COURT: Yes. All right, you may.

(Mr. Lawyer read from Government Exhibit 12.)

MR. APPLEMAN: May I ask that the witness read that item that Mr. Lawyer couldn't read?

THE COURT: Yes, if Mr. Edelstein can, he may.

Q Can you read this item which is next to $605.50?

A That is "Interest."

3 Q Mr. Edelstein, I show you Government Exhibit No. 13 for identification which is simply a folder, sir. Do you know what Government Exhibit 13 is?

A No, I do not. The contents,you mean?

Q Just the folder. Is this your folder?

A Yes, it is my folder.

Q Is this your handwriting, the year 1968?

A That is right.

Q I show you from Government Exhibit 13 a document premarked Government Exhibit 13-A for identification.

Do you know what Government Exhibit 13-A is, sir?

A That is the work sheets for 1968 from which the tax return was prepared.

Q Where did you get Government Exhibit 13-A for identification from?

A Dr. Wolf.

Now, the headings are my writing. The figures, the numbers were filled in by Dr. Wolf.

Q I show you Government Exhibit 13-B for identification. Can you identify 13-B, sir?

A Yes, that is the schedule of capital gains and losses realized during 1968.

Q Where did you get Government Exhibit 13-B from?

A Dr. Wolf.

MR. LAWYER: We offer Government Exhibits 13-A and 13-B.

May the record also reflect that defense counsel was provided with copies of these earlier.

THE COURT: Yes.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

xx (Government Exhibits 13-A and 13-B were received in evidence.)

Q I show you Government Exhibit 14 for identification, sir, just the file jacket. Is that your file jacket?

A Yes, that is right.

Q Is that your file jacket for Dr. Wolf's papers for 1969?

A That is right.

Q I show you Government Exhibit 14-A for identification. Can you tell us what that is, Mr. Edelstein?

A That is the work sheets to prepare the 19 -- let's see the date on it -- 1969 income tax return of Dr. Wolf.

Q I show you Government Exhibit 14-B for identification. Do you recognize that, sir?

A Yes, I do.

Q Would you tell us in a slightly louder voice what that is?

A That is the sheets for the 1969 capital gains and losses transactions.

Q From where did you obtain Government Exhibits 14-A and 14-B?

A Dr. Wolf.

MR. LAWYER: I offer 14-A and 14-B, your Honor, and I would like the record to reflect that copies were provided earlier to defendant's counsel.

THE COURT: Yes.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

xx (Government's Exhibits 14-A and 14-B were received in evidence.)

Q What other books or records, sir, did you keep for Dr. Wolf?

A None at all. Just what is on the sheets.

Q Is that true for each of the four years?

A That is right.

Q Do you have any other files, sir, or documents at your office pertaining to Dr. Wolf's tax returns?

A I do not.

Q Is that true for each of the four years concerned?

A That is right.

Q What did you do, if anything, to verify the information that Dr. Wolf gave you?

A None whatever.

Q Why is that?

A I prepared the return from the information submitted on those sheets.

Q Did you do any bookkeeping at all for Dr. Wolf?

A No, sir.

Q How much did you charge Dr. Wolf for the returns?

A Well, originally I think $250 to $300 for preparing the return. It varied those four years.

Q Did there come times when you were preparing a given return that you had to obtain additional information from Dr. Wolf?

A It is possible, yes.

Q How would you go about getting such information?

A I'd call him up.

Q You would get it orally?

A That is right.

Q Prior to your filing the return, by that I mean sending it off to the government, how was it signed by you and Dr. Wolf; what was the practice?

A The procedure was that he'd come to my office. As far as I recollect he came to my office and he signed the return and then he signed a paper for me and I signed the return itself.

Q What was the practice insofar as sending in the returns, if you recall?

A What was the practice -- I don't understand.

Q What would happen to the return after you signed it and after Dr. Wolf signed it?

A I would mail it out.

Q You would generally mail it out?

A That is right.

Q What instructions, if any, sir, as a habitual, usual matter did you give Dr. Wolf insofar as reporting his income?

MR. APPLEMAN: I will object to that, your Honor.

THE COURT: No, I will permit it. Overruled.

A Would you repeat that question? It is not clear to me.

Q What instructions, if any, prior to sending off the return would you give Dr. Wolf insofar as information he provided?

A None whatever, as far as I know.

Q Do you know, sir, what bank accounts Dr. Wolf had during the periods concerned?

A Well, the only bank account I remember was where he obtained the information and put that on the sheets. I don't recall -- I think it was the Chemical Bank. I'm not sure, but I think it was.

Q Did you know of any other bank accounts?

A No, I did not.

Q Did there come a time, Mr. Edelstein, when you were contacted in connection with an audit of Dr. Wolf's tax returns by federal agents?

A Can you repeat that question?

MR. LAWYER: I will withdraw the question, your Honor.

Q I show you Government Exhibit 16 for identification. Can you identify that, sir?

A Yes, it is a power of attorney.

Q I ask you to look at the back side of Government Exhibit 16. I ask you if this is your signature, sir.

A It is.

Q What date did you sign that?

A October 20, 1970.

Q I ask you to look on the front side of Government Exhibit 16 for identification. Do you recognize the signature at the bottom, sir?

A I do.

Q Whose is it?

A Robert Wolf.

Q Will youtell the jury what were the circumstances of your signing a power of attorney?

A That indicates that I am to represent Dr. Wolf in tax matters for that year.

THE COURT: For what year?

THE WITNESS: It indicates on the power of attorney what years they are.

MR. LAWYER: I will offer this, your Honor.

THE COURT: All right.

Any objection?

MR. APPLEMAN: I've got to see it, your Honor.

THE COURT: Of course.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

xx (Government Exhibit 16 was received in evidence.)

THE COURT: Does it show, Mr. Lawyer, what year it is?

MR. LAWYER: Yes, it does, your Honor.

THE COURT: What year?

MR. LAWYER: 1966, 1967, 1968, 1969.

THE COURT: All right.

MR. LAWYER: The signature which Mr. Edelstein has identified as being Dr. Wolf's was placed on the power of attorney on October 21, 1970 and Mr. Edelstein's are October 20, 1970.

THE COURT: So that it was executed in 1970 but it relates to the four prior calendar years; is that right?

MR. LAWYER: Yes, sir.

THE WITNESS: Yes, sir.

Excuse me a minute. Can I say something? That is when --

MR. APPLEMAN: Your Honor, I object.

THE COURT: All right.

Mr. Edelstein, you can't make a statement.

THE WITNESS: Not clear to some of the people.

THE COURT: I will sustain an objection.

Next question.

Q Turning your attention now, Mr. Edelstein, to the approximate four-week period covering September 17, 1970 through October 1970, did you learn during that period that Dr. Wolf was in fact having his tax returns audited?

A Will you repeat that again?

THE COURT: Will you read that question, Mr. Reporter.

(Question read.)

A Well, I can't verify the dates. I don't remember. Nobody could remember that, what dates they were, but I know that his returns were being audited.

What particular dates, I can't verify.

Q Was that during the period you signed the power of attorney, sir?

A That is right. That is what I was going to say, that the fact is that power of attorney was executed so I could represent Dr. Wolf in the audit of those returns.

Q Did you have a conversation with Dr. Wolf during that period?

A I might have.

Q I ask you to look at Government Exhibit 16 for identification. Do you recognize that, sir?

A Yes, sir.

Q What is it?

A It is a power of attorney.

THE COURT: That is the one that has just been put in evidence?

THE WITNESS: The same as the other one.

MR.LAWYER: I'm sorry, your Honor, it is a power of attorney just like the other one.

THE COURT: All right.

Q I show you Government Exhibit No. 15 for identification. Do you know what that is, sir?

A Yes, sir.

Q What is it?

A That is a letter addressed to me dated February 23, 1970.

Q Where did you get it?

A Dr. Wolf. It is on Dr. Wolf's letterhead.

Q Do you recognize the signature at the bottom, sir?

A I do.

Q Whose is it?

A Signed by Dr. Wolf.

MR. LAWYER: We offer Government Exhibit 15.

THE COURT: All right, let Mr. Appleman see it.

MR.APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

(Government Exhibit 15 was received in evidence.)

xxxxx

MR. LAWYER: Your Honor, may I have permission to read Government Exhibit 15?

THE COURT: You may.

(Mr. Lawyer read from Government Exhibit 15.)

Q Mr. Edelstein, did there come a time, sir, after you signed the power of attorney, Government Exhibit 16 in evidence, that you were asked by Internal Revenue agents what other bank accounts, if any, Dr. Wolf had?

A Are you talking about Mr. Mc Guire?

Q No, sir. Do you recognize the name Morris Skolnick?

A Yes, I do.

Q Did there come a time when he had such a conversation with you about bank accounts of Dr. Wolf?

A He possibly did. I assume he did. I can't remember, but he did.

MR. APPLEMAN: I will object to that.

THE COURT: Yes. We can't let the answer stand. It will be stricken.

Q Did there come a time after you signed the power of attorney, sir, that you spoke on the telephone with

Dr. Wolf about his bank accounts?

A I did, yes.

Q What did you say to Dr. Wolf and what did he say to you?

A Well, youknow, you can't remember the conversation exactly.

Q In substance, sir.

MR. APPLEMAN: I will object to that.

THE COURT: No, I will permit him to testify to a telephone conversation between him and the defendant and if he can't remember the exact words, what he can do is give us his best recollection.

MR. APPLEMAN: I would appreciate the exact date and time, your Honor.

THE COURT: Oh, yes.

About when was this telephone conversation?

THE WITNESS: I couldnever remember that, because the audit --

THE COURT: In what year?

THE WITNESS: It was during the time of the audit that Mr. Skolnick was there. He should know that. I wouldn't know. He made a record of it.

THE COURT: It was during the time of the audit --

THE WITNESS: The audit of the Internal Revenue

Service.

THE COURT: And about the time of the power of attorney?

THE WITNESS: That is right.

THE COURT: Which we know was in October 1970. Does that sound right?

THE WITNESS: I wouldn't verify the month. The year is probably correct.

THE COURT: 1970?

THE WITNESS: That is right.

THE COURT: And it was during the time of the audit in the year 1970 that you had this telephone conversation with Dr. Wolf?

THE WITNESS: That is right.

THE COURT: All right, now we can go on.

Q Will you tell us in substance what you said and what Dr. Wolf said, sir?

A I honestly couldn't remember exactly what the words were. What we discussed, I couldn't say. We did discuss at one time if he had any other bank accounts.

Q What did he say?

MR. APPLEMAN: I will object.

THE COURT: Overruled.

A We did discuss at one time whether he had any bank accounts and that was the time that Mr. Skolnick was making the audit of the returns and Mr. Skolnick mentioned to me whether he had any bank accounts. I said "I don't know of any."

MR. APPLEMAN: Your Honor, I object to what Mr. Skolnick said.

THE COURT: No, I will permit that.

Q Continue.

A That is about all I can tell you.

Q What did Dr. Wolf say?

A That he didn't have any.

THE COURT: We will have to stop here now.

Now, Mr. Foreman, ladies and gentlemen of the jury, we are going to stop now for lunch. I say we would ordinarily come back at 2 o'clock but I think exceptionally today we won't come back until 2:15. There are matters that I have to attend to, so you are excused until 2:15. We will resume the trial then.

Thank you very much.

(Jury left the courtroom.)

THE COURT: What is your problem, Mr. Edelstein?

THE WITNESS: My problem is I had a very important appointment today, a tax examination. I put it off and

Mr. Lawyer advised me that this would take about an hour or so and I would be out of here by 1 o'clock. I won't get out of here until after 3.

THE COURT: That is right, you will have to call up, or maybe Mr. Lawyer can help you. Mr. Lawyer, can you call up and tell them it is my order that whatever the tax examination is it has to be postponed?

THE WITNESS: I can do the calls.

THE COURT: I'm sorry. We will finish with you just as quickly as we can.

THE WITNESS: Have you an idea, Mr. Lawyer, when I will be out of here?

THE COURT: I don't think he has any control over it because Mr. Appleman has something to say about it. We will do it just as quickly as we can.

Now, let's get on.

Mr. Appleman, may I have identified the gentleman who came in?

MR. APPLEMAN: I'm sorry. It is Mr. Max Fruchtman, a practicing trial attorney of 250 West 57th Street.

THE COURT: I am glad to have you, Mr. Fruchtman.

Don't you think it would be better if I told that to the jury?

MR.APPLEMAN: Mr. Fruchtman will be in and out.

THE COURT: I know, but I think Mr. Fruchtman knows enough about trial juries to know that they will be curious.

MR. APPLEMAN: All right.

THE COURT: Don't you think so, Mr. Fruchtman?

MR. FRUCHTMAN: I think it would be a good idea just to say that I am sitting in occasionally, that is all.

THE COURT: Of course. Otherwise they will have all sorts of suspicions or curiosities and it is perfectly normal and natural, but I think it would be advisable if I told them that.

MR. APPLEMAN: Thank you.

THE COURT: Now, Mr. Appleman, I took 15 extra minutes today so that you could have that time to read these documents.

MR. APPLEMAN: I realized that, your Honor, and I thank you.

THE COURT: Do you have the documents?

MR. APPLEMAN: Yes, I do, your Honor. I have all the documents.

(Luncheon recess.)

5

AFTERNOON SESSION

2:15 p.m.

THE COURT: I am curious about one thing. There is probably some obvious answer to it, but why aren't Counts 1 and 5 barred by the statute of limitations?

MR. LAWYER: There was a waiver written and signed by Mr. Appleman.

MR. APPLEMAN: Yes, at that time we were trying to dispose of the matter.

THE COURT: All right. Do you want to bring the jury in.

(Jury present.)

BENJAMIN D. EDELSTEIN, resumed.

DIRECT EXAMINATION

BY MR. LAWYER (Continued):

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, before we resume with Mr. Edelstein I should cover two matters.

The first is that the gentleman at the counsel table for the defense sitting between Mr. Appleman and Dr. Wolf is Mr. Max Fruchtman, a lawyer who is associated with Dr. Wolf and Mr. Appleman and who will be in and out of the courtroom from time to time in that capacity.

The second thing is when I was explaining about our hours this morning I forgot to point out that we will sit on Friday until 1 o'clock, but we won't sit Friday afternoon. I reserve Friday afternoons for motions and other matters in other cases before me.

All right, Mr. Lawyer.

MR. LAWYER: May I request that the last question be read so I can pick up from there?

THE COURT: Yes.

(Record read.)

MR. LAWYER: May the record reflect that over the recess the original income tax returns did arrive in my office and at this time, with the consent of defense counsel, I ask for a consent to remark these documents and to substitute them for Government Exhibits 1 through 4 for identification.

THE COURT: Any objection?

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, Mr. Clerk, you may mark them.

(Government Exhibits 1 through 4 were marked for
xx identification.)

THE COURT: So Exhibits 1 through 4 will now be the originals of the tax returns of Dr. Wolf for the years in question.

MR. LAWYER: Yes, sir.

THE COURT: All right.

MR. LAWYER: At this time I offer in evidence Government Exhibits 1, 2, 3 and 4 presently marked for identification and I ask the Court to take notice of the fact that they do bear the relevant authentication documents from the Treasury Department on them.

THE COURT: Any objection?

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

xx (Government Exhibits 1, 2, 3 and 4 were received in evidence.)

Q Mr. Edelstein, I ask you to look at Government Exhibits 1, 2, 3 and 4 in evidence and tell the Court and jury whether those are the original documents that you affixed your signature to and which you testified to about earlier this morning when you were shown photographic copies.

A These are the originals.

MR. LAWYER: I have no other questions.

THE COURT: All right, Mr. Appleman.

MR. APPLEMAN: I'm sorry?

THE COURT: The direct examination is concluded.

MR. APPLEMAN: Thank you very much.

CROSS EXAMINATION

BY MR. APPLEMAN:

Q Mr. Edelstein, how long have you been a certified public accountant?

A Since 1947.

Q Since 1947?

A Right.

Q You have been involved in other tax examinations, have you not?

A Yes.

Excuse me a minute. What do you mean by "involved"?

Q That you have represented other taxpayers before the Internal Revenue Service with regards to tax controversies?

A That is right. I haven't been involved in anything like this.

Q The first person to see you with regard to the examination of the doctor's returns was a man by the name of Mc Guire?

A That is right.

Q Was he a revenue agent?

A Yes.

Q What year was under examination initially? In other words, what was the first year?

A 1966.

Q Revenue Agent Mc Guire saw you regarding the return for 1966?

A That is right.

Q Are you aware whether the doctor was audited for the year 1965?

A No, I didn't handle 1965. I didn't make out the return so I don't know anything about 1965.

Q What records did you submit to the revenue agent?

A The same records that the doctor submitted to me, his worksheets.

Q His worksheets?

A Right.

Q Did you request bank statements from the doctor?

A If the revenue agent requested it then I requested it from the doctor.

Q Did the agent request it?

A He did, yes.

Q There came a time that the agent did request the bank statements?

A That is right.

Q At that time did the doctor then get you the bank statements for the revenue agent?

A He did, yes.

Q And those bank statements included what bank?

A As far as I recall, it was the Chemical Bank.

Q You have related that the only bank you have any knowledge of was the Chemical Bank; is that correct?

A That is right, at this time.

MR. APPLEMAN: Can I please see the 1966 return?

MR. LAWYER: Yes.

Q I refer you to the 1966 income tax return which you identified for Mr. Lawyer and which was placed into evidence as Government Exhibit No. 1. Was this return prepared by you, sir?

A Yes, sir.

Q Did you yourself prepare it or was it done under your supervision?

A I couldn't tell you. I would have to look at it. I had some people that --

Q Here it is.

A Part of it was -- a portion was prepared by myself and this was prepared by one of my help, this here, this portion (indicating).

This portion I did (indicating).

Q If any portion was prepared by one of your subordinates and under your direction would you subsequently review the work he did?

A I did.

Q On the 1966 return, can you please look at the portion relating to interest income reported and state what is reported there?

A "New York Bank for Savings, $40; the Chemical Bank -- New York Trust, $241.74 and Eastman Dillon, $154.03."

Q Therefore, sir, you were aware of other bank accounts that the doctor had?

MR. LAWYER: Objection.

THE COURT: I will permit it. Overruled.

MR. LAWYER: May I state the basis for my objection?

THE COURT: What is it?

MR. LAWYER: In this particular case he read off Chemical Bank -- New York Trust Company. I think it should be clear that is the same bank as the Chemical Bank with the name changed. He also read off New York Bank for Savings, a different bank, and Eastman Dillon is not a bank at all.

THE COURT: We understand.

A Furthermore, I don't go into any savings account. He has nothing to do -- the interest is prepared by him as far as I remember. I don't know anything about any savings account. It has no relevance to the tax return itself.

Q Sir, I wish to point out on the front -- Dr. Wolf signed the return under the penalties of perjury and you too signed the return that under the penalties of perjury --

MR. LAWYER: Objection. Is this a question?

MR. APPLEMAN: Yes, this is a question.

THE COURT: All right.

Q It says: "I declare that I have examined this return including the accompanying schedules and statements and to the best of my knowledge it is true, correct and complete."

This is the part that pertains to you: "If prepared by a person other than the taxpayer his declaration is based on all information of which he has any knowledge."

6 Now, based on that statement and based on the fact that this was reported on the return prepared by you or under your direction --

A That is right, but the information I had was supplied by Dr. Wolf.

Q How was it supplied by Dr. Wolf?

THE COURT: What is the question?

Q The question is: Did you see the bank account --

A I didn't see it --

THE COURT: Wait, let the question be finished. Did he see what account?

Q Did you see the bank account relating to New York Bank for Savings which is referred to on this return and which you signed as being prepared by you?

A I did not see it, no.

Q Can you please tell us how the doctor then gave you the information which you referred to on this return?

A It either must be on the worksheets or by verbal, one or the other.

Q Sir, I wish to show you Government Exhibit 11-A whcih you previously identified as worksheets used in the preparation of the 1966 return, and can you please show me where the bank interest is shown?

A I said before that either it was on the sheet itself or he gave me the information verbally.

THE COURT: This is a document in evidence, isn't it?

MR. APPLEMAN: That is right.

THE COURT: Then he doesn't have to go through it and look at it.

MR. APPLEMAN: All right.

Q Sir, continuing with the year 1966, Government Exhibit 11-C, you have stated that the doctor either told you or prepared this statement for you indicating that there were $11,610 of money which was borrowed by the doctor during thisperiod of time.

A That is right.

Q Is this in the doctor's handwriting, sir, or your handwriting?

THE COURT: Which is "this"?

MR. APPLEMAN: This is 11-C.

A Let me look at it, please. That is my handwriting and it says "Advised by Dr. Wolf." That is the heading.

Q As you have alleged, if the doctor told you that these were loans did you ask him any further questions pertaining to this information?

A I don't remember.

Q As a certified public accountant, what do you believe your functions are?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Regarding work papers, thoserelating to 1966 pertaining to Exhibit 11-A, the doctor prepared a work sheet pertaining to the entertainment deduction allowed. Can you please tell what the gross figure was?

A $1,142.16.

Q This is the deduction claimed on the return; is that correct?

A I assume so, if you take a look at the return.

Q You would never increase this deduction, would you?

A Unless it was authorized by the doctor. I would never.

Q Based on this work paper did you see any authorization by the doctor to increase that figure?

MR.LAWYER: Objection to the form.

A I couldn't tell you. I don't remember.

Q Would you be shocked, sir, if I told you --

MR. LAWYER: Objection.

Q -- that the entertainment deduction claimed on the return is for an amount of $1,642.42 and not the $1,142.16 as referred to by the work sheet?

A What is shocking about that?

THE COURT: Wait. The objection is sustained.

THE WITNESS: I'm sorry.

Q Can you explain why --

A In all probability I called up the doctor.

I went into questioning him on that and he told me the information. I don't put these figures down just by hearsay. There is a difference there of $500. Is that right?

Q That is correct.

What type of questions would you ask the doctor in order to elicit this information?

A What sort of entertainment it is and whether the amount on there is correct or not correct.

Q The doctor in accordance with the work papers has indicated an amount of $1,142.16.

A That is right.

Q What type of questions would you ask him to ascertain whether this figure should be increased?

MR. LAWYER: Objection.

THE COURT: Sustained.

What questions did he in fact ask him?

Q What questions did you ask him?

A Well, what sort of entertainment it was, what the type of entertainment, that is all, and probably in all cases I'll include traveling too.

Q What we have here is entertainment; the question is: Let's assume that the doctor as a client gave you records, which he did here for $1,142.16. Would you in any way determine as to what records he reflected with regard to the claimed deduction?

MR. LAWYER: Objection.

THE COURT: I will permit it.

A Not necessarily.

Q Not necessarily?

A No, sir. The return itself doesn't warrant any detail where I have to spend so much time on it. I got 250, $300 for the return and that is it, and my figures were based on the work sheets prepared by him.

Q Did you question him about anything else besides the entertainment?

A I don't remember.

Q Did you make any notes pertaining to the questions that you asked about the entertainment?

A If there were any notes they should be reflected in that schedule.

Q Here is the schedule, sir. Please tell us if there are any notes?

THE COURT: Is it in evidence?

MR. APPLEMAN: Yes, sir, it is.

THE COURT: Can you tell by inspecting it whether there are any notes or not?

MR. APPLEMAN: No, your Honor. He prepared it.

THE COURT: You can read it as well as he can.

Q Here is the entertainment figure of $1,142.16.

A I don't see any note.

THE COURT: All right, let's go on.

A I don't necessarily have to make notes. If it was to theextent of $3,000 or $4,000 additional I'd go in detail, but a $500 -- he says $500, I'd put it down.

Q Are you aware of Code Section 162 as modified by Code Section 274 pertainingto the necessity for records pertaining to entertainment deductions?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q The original return reflects a deduction pertaining to conventions in the amount of $5,466.09.

A Yes.

Q Would that be reflected on your work sheet?

A I don't know. Is it on there?

THE COURT: Well, the work sheet is in evidence, is it?

MR. APPLEMAN: Yes, it is.

Q We have a deduction claim for conventions on your work sheet --

MR. LAWYER: Objection to the characterization as his sheet.

Q -- on Exhibit 11-A in evidence which reflects a deduction in the total amount of $4,966.09. Can you please explain the difference between the work sheet and the return as filed or prepared by you, sir?

A That is a difference of $500.

Q That is right, sir.

A That was supplied the same as the entertainment. This information was supplied by Dr. Wolf in a similar nature as the entertainment.

THE COURT: Mr. Edelstein, do I understand that in these two items, conventions and entertainment, the deduction in the return is larger than the figure in the work sheet?

THE WITNESS: I understand that.

MR. APPLEMAN: That is correct that --

THE WITNESS: I understand that.

THE COURT: You say that you got the information as to the additional amounts verbally from the doctor?

THE WITNESS: That is right.

7 THE COURT: All right, let's go on.

THE WITNESS: Can I say something?

MR. APPLEMAN: No.

THE COURT: You better just answer the questions.

THE WITNESS: I'm sorry.

THE COURT: Unless you want to change an answer.

THE WITNESS: No, I don't want to change it. I want to clarify this.

THE COURT: Is it some answer that you have given to a question?

THE WITNESS: No, it is not.

THE COURT: All right, next question.

Q Sir, we have here a heading "For Postage and Supplies."

Does the doctor have any figure for deduction under that heading?

A You are saying printing and supplies?

Q Postage and supplies.

A Not postage. It is printing and supplies.

Q Printing and supplies. I thought it was postage.

Does the doctor have any figures in that column, sir?

A Yes.

Q What figure is that in that column?

A It is $111.44.

Q $111.44?

A Yes, that is right.

Q I'm sorry, I asked about the wrong one. I am referring to postage and deliveries. Is this it?

A Yes, the amount there is $610.

Q Is that in the doctor's handwriting?

A I don't know. I can't tell you.

THE COURT: It is not your handwriting?

THE WITNESS: No.

Q Is it your handwriting?

A Let me say this: When I complete my return and that is any return that I do, the taxpayer signs a paper indicating that he supplied this information to me before I signed his return, and that is my procedure all along and has been.

Q Does the taxpayer always go into detail and examine that submission that you place before him?

A It all depends on the circumstances.

Q During the income tax filing time, sir, would it be feasible for any taxpayer to sit down with you and discuss for a half hour that statement that you have prepared for him?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Did the doctor discuss the figures that you placed before him and the statement that you had him sign?

A Definitely, yes.

Q Did you go into detail?

A Well, I don't remember whether I did or not, but he knows the final result. He knows through the items. He compares the sheet, so he should know what it is.

Q The $610 item, which is not in the doctor's handwriting -- is that your handwriting, sir?

A It doesn't look like mine.

Q Could it have been oneof your subordinates, sir?

A Possibly, sir.

Q But it is not the doctor's handwriting?

MR. LAWYER: I object to that. There has been no evidence that it is not the doctor's handwriting.

THE COURT: No, he says that he doesn't know whether it is or not.

Q Looking at this handwriting, sir, would you say it is similar to the other figures on this statement?

A No, it is not similar.

Q It is not similar to the other numbers placed in that statement, sir?

A He might have been questioned and he might have mentioned it over the telephone.

Q I wish to take notice of another item on the return, "Bridge Tolls and Parking," which is claimed as a deduction in the amount of $430. Can you please state if that is on the work sheet of the doctor?

A It is written -- now, I'll tell you what could have happened.

Q Is that in the same handwriting as the doctor, sir?

A No, it is not.

Q It is not the same handwriting as the doctor; is that correct?

A That is right, but I would like to clarify it.

Can I ask you a question?

MR. APPLEMAN: No, you are not here for that reason, sir.

THE COURT: No, you can't do that.

THE WITNESS: I'm sorry.

THE COURT: All right, next question.

Q We have here a deduction claimed with regard to automobile expense for $448.35.

A Right.

Q The only three items listed by the doctor was one item for $25, another item $203.35, another item for $220. When you prepared the return did you ask the doctor as to what type of expenses was included in there?

A I would, yes.

Q You would?

A Right.

Q Could the $220 have possibly reflected a payment on the automobile, sir?

A I wouldn't know. Why don't you ask the doctor?

THE COURT: No, no comment, Mr. Edelstein.

THE WITNESS: I'm sorry.

THE COURT: Just answer the question.

Q Mr. Edelstein, here is something which is reflected on both the work papers and the income tax return on the same amount.

MR. LAWYER: What year are we talking about?

MR. APPLEMAN: 1966.

THE COURT: We are talking about Exhibit 1.

MR.APPLEMAN: And Exhibit 11-A, your Honor.

THE COURT: All right.

Q You have here an item which states "Secretary, Independent Contractor."

A That is right.

Q In the amount of $4,179.30.

A Yes.

Q And that same amount was reflected on the return.

Did you question the doctor as to what this represented?

A We discussed it, yes. I had an idea what it was, but I discussed it briefly.

Q What was it?

A It was payment -- he had a secretary on a part-time basis, like. In other words, like exactly what it says here: Secretary, Independent Contractor, and that is all in the doctor's handwriting.

Q Yes, definitely. I am not going to contest that.

THE COURT: Mr. Appleman, you must not comment on the answer or make statements. Just ask questions.

Q On what basis, sir, did you determine that this party employed by the doctor was an independent contractor?

A Well, I discussed it with him.

Q What did he say to you, sir?

A That she does other work besides his.

Q What do you mean "She does other work besides his"?

A She might be a secretary to other people besides him. That is the definition of independent contractor.

Q That is a definition of independent contractor?

A That is right.

Q In other words, if I was employed by two different accountants and I was under their sole control and they could direct me as to my work, where to work and when to work on different days, I would be considered an independent contractor; is that true?

MR. LAWYER: Objection.

THE COURT: Sustained as argumentative.

Q Did the doctor say to you that this person who was being paid whom you consider an independent contractor worked in his office, sir?

A Yes, sir.

Q Did he state to you that while she was in his office she was under his sole direction?

A That is right, definitely so.

Q Did he state to you that he was paying her a certain salary?

A He didn't have to state it. There is the figures right on it. It was written in his handwriting right on the work sheets.

MR. APPLEMAN: Your Honor, may I approach the bench, please?

THE COURT: Yes.

(At the side bar:)

MR. APPLEMAN: Under Section 31.3401(c)-1 it is specifically stated that an employer-employee relationship exists if the payor has the right to control and direct the worker besides as to the ends and means for doing it.

I would like to put this before the Court as a rule of law and as actually reflecting the code section.

THE COURT: Oh, no, that is certainly improper. There is no question about arguing with him. It is just a legal argument. You can argue it to the jury.

MR. APPLEMAN: All right, your Honor.

(In open court:)

8 Q With regard to the convention expenses claimed on the return, and I will read it to you to save us some time: "Bogota, Colombia, Lima, Peru, Santiago, Chili, Buenos Aires, Sao Paula, Brazil, Chairman of the Third International Pharmocological Congress," and there was a deduction claimed in the amount of $5,466.09 pertaining to this item.

Did you ask the doctor if any moneys or reimbursements for expenses were received by him?

A No, I did not. It wasn't necessary. The column definitely explains the situation.

Q Explains what situation, sir?

THE COURT: The answer was no. Mr. Edelstein, don't volunteer. He is asking you a question and you said no.

Q Did the agent during the course of his examination of the 1966 return request any information pertaining to the stock transactions of the doctor?

A He did, sir, yes.

Q Were there any problems relating thereto?

MR. LAWYER: I object.

THE COURT: Overruled.

A I don't recall any. I don't know. I wouldn't remember anything.

Q In other words, the doctor's stock transactions as reported on your return as far as you know were proper?

A That is right, from the return submitted by the doctor, from the papers that he submitted. That is where I prepared the return.

Q When you first prepared the return for the doctor did you request any records be submitted to you with regard to the preparation of the return?

A No, sir.

Q You never requested that supporting or substantiating documents be submitted to you?

A No, sir.

Q I wish to show you a 4-column paper addressed to Dr. Robert Wolf reading "One stock transaction" --

MR. LAWYER: Objection, your Honor. It is not marked. I ask that it be marked.

THE COURT: Let him finish the question.

Q -- "Bank deposits, savings bank deposits, and summary of disbursements."

Is this in your handwriting, sir?

A That is right, yes, sir.

MR. APPLEMAN: I would like to have this marked --

THE WITNESS: Can I clarify it?

Q Is it in your handwriting?

A Yes, but --

THE COURT: Do you want to offer it in evidence?

MR. APPLEMAN: Yes.

THE COURT: Show it to Mr. Lawyer.

MR. LAWYER: No objection.

THE COURT: All right, without objection it will be received.

THE WITNESS: That is instructions.

(Defendant's Exhibit A was received in evidence.)

Q In other words, you instructed the doctor to present to you stock transactions, bank deposits, savings bank deposits and --

THE COURT: No, the document is in evidence.

If you want to read it to the jury you can read it to the jury, but there is no use in asking him what it says.

MR. APPLEMAN: All right, your Honor. Sorry.

(Mr. Appleman read from Defendant's Exhibit A.)

Q Sir, I wish to show you Government's Exhibit 12 which you have identified previously.

A That is right, yes.

Q Which is a letter from Dr. Robert Wolf to yourself stating that "I have enclosed a portion of the separation agreement which you requested."

Then, on the bottom it says, "Please return it. It is my only copy."

A Yes.

Q On the other side, sir.

We have a statement signed by Dr. Robert L. Wolf. That statement on the back, as you have previously read states "The following information is to be usedin preparation of my 1967 income tax return. Income $29,000. Deductions, depreciation" -- I think we will dispense reading the amounts, your Honor -- "rent, repair, insurance, legal, interest and other expense."

In whose handwriting, sir, is that?

A The items are in my handwriting.

Q The items are in your handwriting, sir?

A Right.

Q In other words, you prepared this, sir, for the doctor's signature?

A That is right.

Q Did the doctor in looking over these items request any clarification, sir?

A Not that I remember. I don't recall any.

Q Did you expect him to know what is represented by depreciation?

A I sure did.

Q You sure did?

A Yes.

Q Please give your interpretation of what depreciation represents, sir?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q What is the deduction for depreciation as allowed by the Internal Revenue Code represent?

MR. LAWYER: Objection.

THE COURT: I will permit that.

A Depreciation is exactly what the word means, certain percentage each year of any fixtures, equipment that anybody has and that is it, whether it is 10 per cent, 5 per cent, 20 per cent all depends on the wear and tear of the equipment.

Q What you are saying is the Internal Revenue Code allows a deduction for a certain percentage of wear and tear of capital items which last more than one year; is that right, sir?

A That is right, sir.

Q Did you explain to the doctor that this depreciation represented the items purchased at various times for $11,000, an item purchased in 1966 for $900, an item purchased in 1961 for $1,170 and so on?

A I don't remember explaining it to him, but that wasn't necessary.

Q That isn't necessary? Is it your usual practice --

A Yes, sir.

Q -- to go through a depreciation schedule with a client of yours when preparing the return?

A Not necessarily, no.

Q Not necessarily?

A No.

Q Did you speak to the doctor regarding this deduction?

A I don't remember.

Q I show you Government Exhibit 12-A. Can you please state if there is a deduction claimed for gratuities?

A I don't see any.

Q I wish to show you Government Exhibit 2, the 1967 income tax return previously placed into evidence. Can you please tell me if there is a deduction claimed there for gratuities?

A There is, yes.

Q How much did that amount to, sir?

A $350.

Q Are there any notations on your work sheets pertaining to this item?

A I don't see any.

Q But you wouldn't put anything on the return unless it was stated to you?

A Unless I discussed it with Dr. Wolf, right, and he signed for it too.

Q After you discussed it with Dr. Wolf would you make any notations on your work sheets?

A Not necessarily, no.

Q Would you please again look at Exhibit 12-A and see if there is any production therein claimed by the doctor for postage and delivery, sir?

A I don't see it.

Q I wish to show you Government Exhibit 2, the

1967 income tax return. Can you please state if a deduction was claimed for that item, sir?

A Yes, $440.

Q That is not on the work papers of the doctor claimed on the return?

A A similar nature like the other amount. I discused it with him. It was on a prior return. I always discuss any additional thing I have to put on.

9 Q You wouldn't claim a deduction unless it was allowed by the Internal Revenue Code or unless it was related to you by the person whose return you are preparing; is that right?

A That is right, sir.

Q I wish to again show you the 1967 return of Dr. Wolf. There is a deduction claimed for contributions. Can you please read the first item?

A $1,046.

Q As a contribution to what charity, sir?

A The return doesn't indicate it.

Q Sir, we have here an explanation (indicating). Contributions, sir, as to what charity for $1,046, sir?

A It doesn't indicate what charity. It probably is miscellaneous, various charities.

MR. APPLEMAN: Your Honor, on the same line --

THE COURT: What is it you want to do?

MR. APPLEMAN: I want to show that he has here a deduction claimed for charity.

THE COURT: You can argue it to the jury. It is in evidence.

MR. APPLEMAN: It has Columbia Grammar School.

THE WITNESS: Thank you very much.

THE COURT: The whole document is in evidence.

Q Does it state here a deduction for Columbia Grammar School, $1,046?

A Yes, that is right.

Q Is Columbia Grammar Grammar School a religious or charitable organization, sir?

A I wouldn't know that, but it is a contribution.

Q It is a contribution?

A That is right. He mentioned it to me.

Q If I made a contribution to any school would that be an authorized deduction under the Internal Revenue Code?

A It all depends on the circumstances, what the school is. That is a general statement; you can't be specific on it.

Q Fine.

What is Columbia Grammar School?

THE COURT: Don't make any comment on the witness' answer. Just ask questions. You may argue at the end to the jury on summation.

Q Columbia Grammar School was related to be what, sir?

A What was that again?

Q Columbia Grammar School -- when questioning the doctor, what did the doctor say that represented?

A I don't remember. I don't recall.

Q Is that a religious institution as far as you know, sir?

A It doesn't necessarily have to be a religious institution as a deduction. The Code doesn't necessarily say so.

Q Is it a charitable institution?

A Maybe certain phases of that school is.

Q Sir, do you know for a fact --

A And the doctor is aware of that deduction.

Q Sir, do you know for a fact whether the Columbia Grammar School is a charitable or religious organization?

A I wouldn't know.

Q But yet --

A I don't go into those facts when I prepare the return. It will take me four days to do it.

THE COURT: No more arguing on this with the witness. Let's go on.

THE WITNESS: I'm sorry, your Honor.

Q Still pertaining to the same exhibit, Government Exhibit 12-A and the 1967 income tax returns, we have here an item labelled "Decorating"?

A Yes.

Q And that amounts to how much?

A $1,521.94.

Q How was that claimed on the 1967 return of Dr. Wolf, sir?

A As a deduction.

Q As a deduction?

A Right.

Q I wish to show you Government Exhibit 11 in evidence.

THE COURT: 11?

MR. APPLEMAN: Yes, I am going back to 1966, your Honor.

THE COURT: Yes, but 11 is not in evidence.

MR. APPLEMAN: For identification, I'm sorry.

Q Is there a similar item --

MR. LAWYER: 11 is simply a file jacket.

MR. APPLEMAN: 11-A. I'm sorry, your Honor.

THE COURT: That is something else.

MR. APPLEMAN: I apologize.

Q Is there a similar item in that year, sir?

A Look at the return. You'll see it. Is it there?

Q Is it similar on the work papers, sir?

A In 1966?

Q That is right.

A There is a similar item, yes.

Q Decorating?

A 3639.86.

Q Looking at Government Exhibit 11 and 11-A, can you tell us where that was claimed as a deduction?

A That was used as a capital improvement.

Q Looking at the work sheets to refresh your recollection, is there any reason why in 1966 this was claimed as a capital improvement and in 1967 this was taken as a deduction?

A In all probability I discussed it with Dr. Wolf and he explained the various phases of the capital improvement and the other item in 1967.

Q In all probability you also discussed this item with Dr. Wolf in 1966?

A Yes, that is right.

Q And in 1966 you decided it was a deduction?

A In 1966.

Q You decided that decorating in 1966 was a capital improvement and in 1967 it was a deduction?

A That is right.

Q In 1967, in accordance with the work sheet prepared by Dr. Wolf, Exhibit 12-A, there is an item here check deposits, 1967 in the amount of $35,849. Is that correct, sir?

A No, it isn't correct. The total is $50,872.

Q $50,872?

A Yes, the continuing sheet of that.

Q On the 1967 return which you prepared your reported gross receipts of $29,212?

A That is right.

Q Is there anything on that work paper that would show why you reported $29,000 rather than $50,000 as shown by the doctor?

A Have you got that sheet that you showed me before, that schedule, 1967?

Q What sheet?

A You showed me a letter which Dr. Wolf signed.

Q There is a letter Dr. Wolf signed?

A Is that 1967?

Q Yes, it is.

A All right, now -- I discussed this.

Q There is a question pending.

A I'm sorry.

THE COURT: Can you find the pending question, Mr.Reporter?

(Question read.)

THE WITNESS: Is that the question?

THE COURT: Yes.

THE WITNESS: If you see that memorandum --

Q Please answer the question.

THE COURT: He is asking you whether there is anything on that paper in front of you that explains the difference.

THE WITNESS: No.

THE COURT: All right, next question.

THE WITNESS: But I wouldlike to clarify it, your Honor.

THE COURT: All right. Mr. Lawyer will ask you a clarifying question on redirect examination. Let's go on.

Q Do you have anything besides this piece of paper prepared by you and signed by Dr. Wolf reflecting income of $29,000 to explain the difference between the amlunt reported and the deposits shown to you, sir?

A Can I see that paper?

Q Yes, sir.

MR. LAWYER: May the record reflect that he is asking for Government Exhibit 12?

THE WITNESS: That is all the information I received.

THE COURT: Where is the original?

MR. LAWYER: Mr. Appleman, would you show him the original?

THE COURT: All right, now showing the witness Exhibit 12.

MR. APPLEMAN: Yes.

THE COURT: What do you want him to tell us?

10 Q Is there any other document that would explain why you did not report or did not reflect the $50,000 of deposits shown to him when the doctor prepared his work sheet for use in the preparation of his 1967 return?

A Would you repeat that question? It is not clear to me.

THE COURT: Please read the question, Mr. Reporter.

(Question read.)

A The only document is this document indicating his sales were $29,000 and signed by him.

THE COURT: That is Exhibit 12?

MR. APPLEMAN: Exhibit 12.

A Yes.

Q This Exhibit 12 was prepared by you; is that correct?

A And signed by Dr. Wolf.

Q Answer the question.

A That is important.

THE COURT: No, he said it was prepared by him and signed by Dr. Wolf. Now, let's get on.

Q Sir, I am referring to Government Exhibit 13-A in evidence, which is the work papers used in preparation of the 1968 return.

I am now referring to the item or the column under Decorating Expense, sir.

A Yes.

Q Can you please tell me how much was shown as per the work sheet submitted to you?

A $801.34.

Q Can you please tell me what was claimed for decorating on the 1968 return prepared by you?

A On the return under the category of office expense.

Q Can you please relate to the Court --

A $801.34.

Q Thank you.

Can you please relate to the Court as to why the identical item in 1966 was claimed as a capital improvement, in 1967 was claimed as a decorating expense and why in 1968 it is now included as office expense rather than decorating?

A Everyone of those deductions are undera different category. I discussed in detail with Dr. Wolf what it was and that is why these particular items, decorating of $801, which he indicated on his work sheets be classified under office expense.

Q Could the decorating in 1966 or 167 be for other than his office, sir?

A Well, it all depends on what it indicates. I couldn't remember what it was for, but I know it was discussed.

Q Based on the doctor's practice and his business methodology, what else could this decorating have been for?

A I don't --

Q Could it have been from Mount Sinai Hospital where he was employed, sir?

A No, wherever it is indicated.

Q Could it have been for his home, sir?

MR. LAWYER: Objection.

A I wouldn't know. I can't tell whether it was for his home.

THE COURT: I will allow it.

Q If I told you that I decorated my office would you claim that as a business deduction, sir?

MR. LAWYER: Objection.

THE COURT: Sustained. This is just a colloquy between counsel and the witness. Let's get on.

Q In 1968 there are certain deductions claimed for charitable contributions. Can you please tell me what the item"CGS,"$150 represents?

A Offhand I don't remember, in fact, what it represented. The doctor can probably tell you better than I can.

Q Did you prepare the return?

A Yes, sir.

Q Did you put "CGS" down, sir?

A That is right.

Q What does "CGS" refer to?

A I don't know. I know that I discussed these deductions, $150, these deductions, and the doctor -- this happened in 1968. He told me it was a charitable organization. I don't remember what particular organization it is, but we put it down.

Q But you do remember it was discussed and the doctor told you what it was for?

A That is right.

Q Isn't it reasonable to believe that "CGS" represents Columbia Grammar School again, sir?

A Possible, yes.

Q Again on the contributions with regard to Government Exhibit 3, the 1968 return, we have another item for CGS" in the amount of $1,350. Is there any reason why these twowere not combined?

A Not that I know of.

Q But they would represent the same party to whom the money was given?

A Excuse me a minute. What do the work sheets indicate? Does that show that?

Q You can have the work sheets.

A The work sheets indicate possibly what happened is they were put, deducted in two different categories, but there is on the work sheet more than $150. Offhand I can't tell you what they totalled, but it is more than $150. There is one item for$150 and nine items which should total about $1,350.

Q On the doctor's work sheets?

A That is right.

Q These items are reflected as contributions, other payments to CGS?

A That is right.

Q Did you ask the doctor what CGS represented?

A Yes.

Q What did the doctor say to you?

A It is Columbia Grammar School. It is similar as to the other year's return.

Q And in your opinion the Columbia Grammer School is a religious or charitable organization?

A I don't recall what the details were, but we discussed it and he claimed it was a charitable -- he put it on his work sheet as a contribution.

Q If I were to come to you to prepare my return and I represented to you that I donated or contributed $1,500 to the Blauvelt Elementary School, would that be considered a charitable contribution?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q When the doctor and you began preparation of a return, did you submit any papers or instructions to the doctor?

A No, sir.

Q You submitted no papers or instructions to the doctor?

A The only thing I submitted --

THE COURT: Don't repeat. He just said that.

MR. APPLEMAN: Okay, sir.

Q Can you please tell me on these 14 column papers as to the handwriting regarding the headings for the deductions?

MR. LAWYER: What exhibit number, please?

MR. APPLEMAN: 13-A.

A My handwriting, and I gave you the reason for that. The heading only.

Q I asked you the question --

THE COURT: He hasn't asked the reason.

A The headings only.

Q Therefore you did submit work papers to the doctor for preparation?

A Only the headings.

Q No instructions?

A No, sir.

THE COURT: Mr. Appleman, while you are arranging your papers for your next question, suppose we take a few minutes rest. We will excuse the jury.

(Jury left the courtroom.)

MR. APPLEMAN: Your Honor, I apologize for taking so long.

THE COURT: It is all right.

(Recess.)

(Jury present.)

THE COURT: Go ahead, Mr. Appleman.

Q Mr. Edelstein, you previously testified that you knew of no other bank accounts other than the checking account at the Chemical Bank.

A That is right.

11 Q I wish to show you Government Exhibit 4, which is the income tax return for 1969, prepared by you, Mr. Edelstein. Can you please state as to what bank account interest income is reflected?

A Bankers Trust.

Q So therefore at the time you prepared the 1969 income tax return you were well aware of the fact that the doctor an account at Bankers Trust; is that correct?

A In 1969, yes.

Q When you prepared the return.

In April of 1973, before the grand jury the question was asked of you --

THE COURT: I think the proper form of the question is: Was this question asked and was this answer given.

Q Was this question asked at that time:

"Q Did you know he had an account at the Bank of New York?

"A No, I don't remember that. I never kept track of his bank accounts.

"Q Right. Had you ever discussed with him his account at Bankers Trust Company?

"A No."

A That is right.

Q That is right?

A Yes.

Q Yet on the 1969 income tax return there is reflected an item of interest income from the Bankers Trust Company.

THE COURT: That is an argument for the jury. It is addressed to the witness. It is simply an argument.

Q I wish to show you Government Exhibit 2, which is the 1967 return of Dr. Robert L. Wolf which you have stated you prepared. Is there an item of interest income reflected from Bankers Trust Company on that return, sir?

A There is $17.74.

Q I am now referring to Government Exhibit 14-A, which is the work sheet prepared by Dr. Wolf. Can you look at the column headed "Decorating Expense"?

A Yes.

Q And how much was claimed in that year?

A $1,461.24.

Q I wish to show you Government Exhibit 4, which is a 1969 income tax return.

Can you please tell me where that item is referred to?

A That was capitalized, handled as a capital asset.

Q Will you please show where?

A In here, 198.

Q 1968, a 1969 Oldsmobile?

A Wait a minute. I'm sorry. 1969, that is -- I'm sorry. That is not it.

Q Please speak up, Mr. Edelstein.

A That is not it. I was under the impression that was a capital asset. It was handled as a repair item on the return, 1,461.24. That is what his work sheets indicates.

Q You state that this is what his work sheet indicated?

A That is right.

Q The work sheet in 1966 with the heading "Decorating" indicated an item which was capitalized. In 1967 it indicated an item which was taken as a deduction for office expense, if I'm not mistaken. In 1968 -- do you recall how you took it at that time?

A I do not.

MR. APPLEMAN: We are jumping around quite a bit. I find it difficult to --

THE COURT: Haven't we been over this already?

THE WITNESS: Yes.

MR. APPLEMAN: Yes.

THE COURT: Why do we have to go over it again?

MR. APPLEMAN: Each year he claimed it as a different --

THE COURT: That is already in the record. 1969 might not be in the record. All I am questioning is this constant review of the three previous years is not necessary.

Q So in 1969, although in this item with the heading of decorating expense for $1,400 -- I'm sorry. This item was labelled as a decorating expense. You in this year, as distinguished from the prior years, represented this as repairs; is that correct, sir?

A That is right, sir.

Q Again referring to Government Exhibit 14-A under the hearing "Legal and Professional Expenses," can you please tell me as to what the total is in that column as reflected on the worksheets submitted to you?

A $566.67.

Q Can you please tell me what figure was reflected on the 169 income tax return?

A $916.67.

Q Is there anything under work papers to indicate as to why an item when listed in the amount of $566.67 as reflected on the work papers is reflected on the income tax return as $916.67?

A No, it doesn't show on the work papers, but I know what it is. It is my fee in there and he didn't include it in the work sheets.

Q Were your fees paid by check, sir?

A Yes, sir.

Q How much was your fee, sir?

A That is 1969?

Q Yes.

A As far as I can remember it was about, a little over $300.

Q Was it $350? Was it $400?

A It was $400. It was $350, I think.

Q You think?

A Yes.

Q Would your records reflect as to the amount of money --

A He would have a check for that.

Q Would your records reflect as to what Dr. Wolf paid you?

A I think so.

Q Don't you know?

A It should reflect it if I got it, if I received it.

Q You claim this as a deduction on the doctor's return. The doctor is on a cash basis. If you had not received it would you have claimed this as a deduction, sir?

A No, no, I wouldn't.

Q Therefore, did you receive the $350?

A I received it, yes.

Q And that would be reflected on your books and records?

A That is right.

Q Perhaps you can help me. On the 1969 return there is an item 14 of Schedule C for repairs in the amount of $590.84. Then in the items called "Other Business Expenses" again there was claimed a deduction for repairs of $1,461.24. Can you please assist me and tell me where those two figures are coming from?

A That was one of the items I discussed with Dr. Wolf.

Q In other words, that does not appear any place on the worksheets?

A I don't see it.

Q In discussing this item with Dr. Wolf you stated or there were indications that repairs of $1,461.24 and repairs of $590.84 were made?

A That is right.

Q This is just based on verbal conversation with Dr. Wolf; is that correct?

A It is $590.84 which appears on the work sheets.

Q So the only one we are concerned with --

A $1,461.24.

Q After consultation with Dr. Wolf you determined that he was entitled to an additional deduction for repairs of $1,461.24?

A He mentioned the fact that that is what the amount would be.

Q He mentioned the fact that that was the amount? He didn't say it was going to be $1,400?

A I don't remember.

Q He didn't say $1,500?

A I don't remember what he said was the amount. I have it on the record.

Q That is the amount he said?

A And he signed a paper to that effect.

12

Q And he signed a paper to that effect?

A That is correct, right.

Q Did the doctor submit any substantiating documents to you with that item?

A He didn't submit any substantiating documents of anything.

Q Do you have the paper which the doctor signed with regard to this item in 1969?

A Yes, I have, and the Treasury Department has too a copy of it.

MR. APPLEMAN: Can I please have it?

MR. LAWYER: I haven't got it.

MR. APPLEMAN: You have no such paper?

Q Do you have a copy of that paper?

A Not with me, no. He signs a paper in general stating --

MR. APPLEMAN: I object to this, your Honor.

THE COURT: I will permit it. What did he sign?

THE WITNESS: He signs a paper in general stating that the information he supplied to me and prepared on the return and he signs that paper. That is it.

THE COURT: Where are the papers that he signed?

THE WITNESS: I have them in my records.

THE COURT: All right.

Do you want them brought here?

MR. APPLEMAN: Yes.

THE COURT: Would you bring them here the first thing in the morning?

THE WITNESS: I couldn't do that, your Honor.

THE COURT: Why is that?

THE WITNESS: Because I have so many commitments. I have a heart condition. It is physically impossible for me to do it. I will bring it some other day.

THE COURT: Can you bring it the day after tomorrow?

THE WITNESS: Is there any possibility that I can do it some day next week?

THE COURT: No, you cannot. 9.30 Thursday morning, then.

All right, let's go on.

Q Did you receive any summons from any representatives of the Internal Revenue Service, sir?

A What do you mean by a summons? In what respect?

Q A summons for the records which you have pertaining to the defendant.

THE COURT: You mean a subpoena?

MR. APPLEMAN: A Treasury Department summons, Form 7601, your Honor.

THE WITNESS: I don't recall any summons.

Q Did the Revenue agent or the investigating officer request all papers which you used for the preparation of Dr. Wolf's return?

A Verbally, yes.

Q Did you submit all those papers to the Internal Revenue Service?

A I did.

Q You did?

A Yes, sir.

Q Included among those papers -- were these memorandums signed by Dr. Wolf submitted to the agents?

A As far as I can remember, yes.

MR. APPLEMAN: Mr. Lawyer, are they part of any records which you have?

MR.LAWYER: May the record reflect that he said "to the Treasury Department." I haven't seen them. He said he submitted them to the Treasury Department.

THE COURT: He is going to bring them here.

THE WITNESS: I will. That is no problem.

THE COURT: Let's go on.

Q I again wish to call your attention to Government's Exhibit 14-A pertaining to the year 1969. Can you please tell me the total amount claimed as a deduction for telephone?

A Yes, I see it here.

Q What is that amount?

A $622.49.

Q That is $622.49?

A That is right.

Q I wish to show you a Schedule C-1, of the deductions claimed on Government's Exhibit 4, the 1969 tax return of Dr. Wolf prepared by you. Would you please tell me the amount claimed as a deduction on the return, sir?

A $1122.49.

Q In other words, there was a difference of how much, sir?

A $500.

Q And there is no reflection on the work papers as to how you arrived at this $500?

A No, but I can tell you and I stated about four or five times before today that I discussed this with Dr. Wolf and he mentioned orally of the additional telephone calls.

Q When did he mention this to you?

A I don't know. I can't remember when.

Q You don't remember when?

A Well, I mean, before I prepared the return, the 1969 return. It would be some time in April of 1970, I assume.

Q This would be mentioned before you prepared the return?

A That is right.

Q Did you prepare a work sheet with regard to the preparation of this return?

A No, sir.

Q You used the doctor's work sheet; is that correct, sir?

A That is right.

Q Therefore, all notations and everything on this return would be reflective of the doctor's work sheets or notes that you made on the work sheets; is that correct, sir?

A That is right.

Q And there are no notes pertaining to the increase of this item?

A Except as I said before, I discussed it with him orally.

Q Will you please look at the 1969 return and indicate to me whether you prepared it or one of your assistants prepared it?

A One of my assistants prepared it.

Q Under your supervision?

A That is right, sir.

Q Did any of your assistants take it upon themselves to increase any amount which is reflected on the work papers?

A No,sir.

Q Therefore, you had to instruct your subordinate to increase it by that amount; is that correct?

A That is right.

Q Sir, we are still on Government's Exhibit 14-A with regard to the 1969 return. Can you please tell the Court the amount reflected as a deduction for entertainment expenses?

A $1263.74.

Q I now show you Government's Exhibit 4, the 1969 return of Dr. Wolf. Can you please tell me what amount is reflected for the deduction for entertainment expense?

A $1763.24.

Q A difference of how much, sir?

A $500. This applies to the same principle as the others, supplied by Dr. Wolf.

Q Still on Government's Exhibit 14-A, the year 1969, we have a column here pertaining to transportation and taxis. Can you please tell me the amount that the doctor referred to on his work sheet as a deduction?

A There is no amount there.

Q Will you please look at the 1969 return, Government's Exhibit 4, and tell me if there was any deduction claimed for transportation and taxis.

A There is, yes.

Q What is the amount of the deduction?

A $175.

Q There is no reflection under that heading on the work sheets of Dr. Wolf?

A No, but this principle applies to the others.

Q I know. Still dealing with Government's Exhibit 14-A, can you please state if there is a column headed "Cleaning"?

A Yes.

Q What amount is reflected on the doctor's work papers?

A $672.50.

Q Can you please look at Government's Exhibit 4 and state if there was a deduction claimed for this item, cleaning, and the amount of the deduction claimed on the return?

A There is, yes.

Q What is the amount of the deduction?

A $1072.50.

Q Whereas the doctor's work papers reflect how much?

A $672.50, and that principle applies like the others.

Q Will you continue examining Government's Exhibit 14-A and relate if there is any column headed "Bridge Tolls and Parking"?

A I don't see anything. I see the caption but there is no amount there.

Q There is no amount there?

A No.

13 Q Will you please look at the deductions claimed on Government's Exhibit 4, the 1969 income tax return of Dr. Wolf prepared by you, and tell me if there is any deduction claimed for that caption?

A Bridge tolls and parking, $65. Excuse me. Can I say something? Remember this $350 difference on professional fees? There it is, it says "Accountant, $350."

Q That $350 was placed on the work sheet; is that correct?

A That is right.

Q But the other items were not? The other differences between the amounts reflected on the doctor's work sheet and the return isnot shown anywhere on the doctor's work sheets; is that correct, sir?

A Just a minute, sir. Is that professional fees indicated?

Q What I am trying to say --

A Let's look at --

THE COURT: Let's cut out the argument, please. Next question.

Q What I am trying to say -- I am not arguing -- if the professional fees of $350 and $566.67 was reflected on the doctor's work sheets. However, the other increases with regard to the differences of these items I showed you from the work sheet to the return are not reflected on the doctor's work sheet.

A That is right. And he orally gave me these figures.

MR. APPLEMAN: I ask that the last response be stricken.

THE COURT: Read it, Mr. Reporter.

(Record read.)

THE COURT: I will permit it to stay.

I guess we will have to stop now. Mr. Foreman, ladies and gentlemen of the jury, I promised we would stop at 4.30. Please keep in mind my instruction not to discuss not to discuss the case amongst yourselves or with anybody else. Let's meet at 9.30 and let's everybody be here at 9.30 tomorrow morning.

(The jury left the courtroom.)

THE COURT: What would you like to say, Mr. Edelstein?

THE WITNESS: Those sheets that they want, the copies, is it possible that I can mail you photostats of those? Could I mail them?

THE COURT: No, because we aren't finished with your testimony.

THE WITNESS: I thought he was finished.

THE COURT: How much longer will you be?

MR. APPLEMAN: It will go much faster tomorrow. I will be much better prepared.

THE WITNESS: That is not an answer.

THE COURT: Mr. Edelstein, you are injecting yourself too much into the running of this trial.

THE WITNESS: I'm sorry.

THE COURT: I am running the trial. Now, do I understand you to say that you have made plans for tomorrow and that you can't have these papers here by tomorrow?

THE WITNESS: No, sir, I can't.

THE COURT: Then is there any reason that we shouldn't take some other witnesses tomorrow and have this gentleman come back at 9.30 on Tuesday?

MR. APPLEMAN: Okay.

THE WITNESS: I appreciate your consideration.

THE COURT: I don't want to have to commit you to the marshal and keep you overnight in the jail to have you here tomorrow morning at 9.30. I am trying to be as considerate as I can.

THE WITNESS: I am an innocent bystander.

THE COURT: You are not an innocent bystander. You are a citizen of this country doing your lawful duty to appear here as a witness and I will commit you to jail as a material witness --

THE WITNESS: I am also a sick individual, too.

THE COURT: That may be. You will have to get a doctor to come down here to tell me that.

THE WITNESS: Can I say anything else? Is there any way I can make it Friday morning instead of tomorrow?

THE COURT: I don't think you can. I am willing to let you come back on Thursday to suit your convenience instead of tomorrow.

THE WITNESS: All right.

THE COURT: I take it you would rather come back on Thursday than tomorrow?

THE WITNESS: That is right, sir.

THE COURT: All right.

Then I am willing to make that concession.

Do you want these papers for all four years?

MR. APPLEMAN: Yes, your Honor.

THE WITNESS: Excuse me, can I interrupt?

MR. APPLEMAN: One year we have.

THE COURT: Wait, please.

THE WITNESS: The reason I say that is the fact -- they are up my office. I have to go up there. There is no physical chance of me going up there tomorrow. I have to be out on Long Island. I am committed there. It is very important. In order to get here at 9.30 Thursday I have to go up the office, then be back here, make the photostats. The girl doesn't come in until 9.30 and it is very difficult.

THE COURT: Why do you have to make photostats?

THE WITNESS: Well, I have to get --

THE COURT: You can bring the originals.

THE WITNESS: I have to get there at 9 o'clock. Is there any chance I can make it later?

THE COURT: You can come here at 10.30 but don't bring any copies. Bring the originals.

Do you understand what we want?

THE WITNESS: Yes, sir, I know.

THE COURT: You said there were some papers that Dr. Wolf signed saying that he had furnished the information to you?

THE WITNESS: Yes.

THE COURT: We would want the originals of all of those papers for these four years of returns. He would have signed such a paper, I assume, in 1967, 1968, 1969 and 1970.

THE WITNESS: All right.

THE COURT: Do you understand what we want?

THE WITNESS: I know what you want. Just the question of how I can do it.

THE COURT: 10.30 on Thursday with the papers and until that time you are excused.

THE WITNESS: Thank you.

THE COURT: All right.

(Witness excused.)

THE COURT: Anything else we can do tonight?

MR. APPLEMAN: Your Honor, I think at this time it would be appropriate for me to mention the fact that I would request an additional charge to the jury with regard --

THE COURT: You will have to write it out.

MR. APPLEMAN: I will.

THE COURT: The quicker the better.

Mr. Lawyer, we will have Mr. Edelstein here at 10.30 on Thursday. We will interrupt whatever witness is on the stand at that time.

MR. LAWYER: Yes.

THE COURT: Then counsel in the case on trial are excused.

(Adjourned to November 14, 1973, at 9.30 a.m.)

B6

United States of America

-vs- 73 Cr. 486

Robert L. Wolf

New York, New York
November 14, 1973--9:30 a.m.

[Trial resumed; jury present]

THE COURT: Members of the jury, if you remember, I excused the witness Mr. Edelstein for today and I have directed him to come back tomorrow at 10:30 to finish his testimony, so we will interrupt Mr. Edelstein's testimony and take the Government's next witness. Mr. Lawyer?

MR. LAWYER: Cornelius Gallagher, please.

THE CLERK: He is not in there.

MR. LAWYER: Peter Esquerra.

PETER ESQUERRA, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Do you work for the Bank of New York, sir?

A Yes, I do.

Q Where is the Bank of New York located, the main

Branch?

A 48 Wall Street, New York, New York.

THE COURT: I guess that is the main office, not the main Branch?

THE WITNESS: The principal office, yes.

Q How many offices do you have in this City?

A Nine Branches, about.

Q Is the Bank of New York a regular commercial bank, that is, for checking and savings accounts?

A Yes, it is a regular commercial bank.

Q Just what is your position with the bank?

A I am a member of the auditing staff of the Bank of New York.

Q Will you tell us briefly what your duties are?

A One of our duties in the auditing department is a periodical audit of the operations in the Branches. We audit Branch operations such as checking accounts, savings accounts, loans and other things.

Q How long have you been with the bank?

A Approximately six years.

Q Were you a lawyer in the Philippines prior to that?

A I am a lawyer in the Philippines.

Q In the course of your regular duties have you become familiar with the various types of records and files which are made and maintained by the Bank of New York with respect to customers' accounts?

A Yes. In the course of our audits.

Q I ask you to look at Government Exhibit 55 for Identification, which has been placed before you. Can you identify that, sir?

A This is the signature card for our savings account No.4552 in the name of Robert L. Wolf.

Q Is the original copy of that, sir, a business record of the Bank of New York?

A Yes, it is, sir.

Q Was that original copy made in the regular course of the business of the Bank of New York?

A Yes.

Q And is it part of the regular course of business of the Bank of New York to make such records?

A Yes.

MR. LAWYER: Your Honor, we offer Government Exhibit 55.

THE COURT: All right, show it Mr. Appleman.

MR. LAWYER: May the record reflect, your Honor, that Government Exhibit 55 for Identification is a photographic copy of the original signature card. I have shown to defense counsel the original itself of the signature card and it is agreed that the copy may go into evidence.

THE COURT: All right. Any objection, Mr. Appleman?

MR. APPLEMAN: No, your Honor, I have seen the original.

THE COURT: All right, mark it.

xx [Government Exhibit 55 received in Evidence]

THE COURT: What is the date of it, Mr. Lawyer?

MR. LAWYER: I am going to have it read now, your Honor.

Q On what date was the account opened, referring to Government Exhibit 55 in Evidence?

A It was opened May 5, 1961.

Q Was that a joint account or an individual account?

A It is an individual account.

THE COURT: What Branch is it, Mr. Esquerra?

THE WITNESS: It was at the 73rd Street Branch of the bank.

THE COURT: That is 73rd Street and what?

THE WITNESS: 73rd Street and Madison Avenue.

Q For what kind of account, savings or checking?

A It is a savings account.

Q I show you Government Exhibit No.56 for Identification. I ask you to look at that and tell us whether or not you are able to identify it.

A This is the ledger sheet for our savings account No.6552 in the name of Mr. Robert L. Wolf.

Q Does Government Exhibit 56, sir, refer to the same account to which Government Exhibit 55 referred to?

A Yes.

Q Is Government Exhibit 56 for Identification, presently before you, a business card of the Bank of New York?

A Yes.

Q Was Government Exhibit 56 for Identification made in the regular course of the business of the Bank of New York?

A Yes, it was.

Q Is it part of the regular course of the business at the Bank of New York to make and keep such records as Government Exhibit 56?

A Yes.

MR. LAWYER: We offer Government Exhibit 56.

May the record reflect that I am showing the original of Government Exhibit 56 to defense counsel and that the document before the witness is a photographic copy.

MR. APPLEMAN: Your Honor, I think it should be noted for the record that the account is offered for the period March 31, 1969 to June 30, 1971.

THE COURT: That is the period covered by the ledger sheet?

MR. APPLEMAN: That is being offered in evidence.

THE COURT: Any objection?

MR. APPLEMAN: No objection.

THE COURT: All right, mark it.

xx [Government Exhibit 56 received in Evidence]

MR. LAWYER: Your Honor, may I at this time read one of the entries on the exhibit to the jury?

THE COURT: You may.

[Mr. Lawyer read from Government Exhibit 56]

Q Sir, I have placed before you Government Exhibit 56A for Identification and I ask you to look at that document and tell us whether or not you are able to identify it.

A This is the savings deposit slip for account 4552 in the name of Robert L. Wolf on September 11, 1969.

Q Is Government Exhibit 56A, sir, that is the original document, a business record of the Bank of New York?

A Yes, it is.

Q Was that document made in the regular course of the business of the Bank of New York?

A It was.

Q Is it part of the regular course of the business of the Bank of New York to make such documents as the original of 56A?

A Yes, it is.

MR. LAWYER: Your Honor, we offer in evidence Exhibit 56A. May the record reflect that I am showing the original document to defense counsel.

THE COURT: Any objection?

MR. APPLEMAN: No objection.

THE COURT: Mark it.

xx [Government Exhibit 56A received in Evidence]

Q Please read the date of the deposit slip that is Government Exhibit 56A?

A September 11, 1969; 9/11/69, to be exact.

Q For what account number?

A 4552.

Q Is that the same account to which Government Exhibits 56 and 55 refer?

A Yes.

Q For how much was the deposit, sir? For what amount of money was the deposit made?

A $6,916.86.

MR. LAWYER: I have no more questions.

THE COURT: All right, Mr. Appleman.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mr. Esquerra, looking at Government Exhibit 56A in Evidence with regard to the deposit made on September 11, 1969, does that deposit slip indicate whether the deposit was made by cash or by check?

A No, it would not. It would not.

B7 Q I have a photocopy of Government Exhibit 56A and --

A May I please hear the question again? I'm sorry, your Honor.

THE COURT: All right, the reporter may read it.

THE WITNESS: Because, your Honor, I don't know which was 56A. I have only the original here and --

THE COURT: Who has the document in evidence?

MR. LAWYER: I'm sorry. I will hand it to the witness, your Honor.

THE COURT: Is 56A what you want to show him?

MR. APPLEMAN: That is correct.

Q That is the savings deposit book, Mr. Esquerra; is that right?

A Yes.

Q Referring to that deposit made on September 11, 1969, does this Government exhibit in evidence indicate whether the deposit was in cash or check?

A It is in check.

Q It is by check?

A By check, yes.

Q So therefore on September 11, 1969 a depsit was made to your account in the amount of $6,916.86 by one check; is that correct, sir?

A Yes.

Q Referring to Government Exhibit 56 in Evidence, which is the account itself --

THE COURT: The ledger sheet.

Q --The ledger sheet --

THE COURT: All right?

THE WITNESS: Yes.

Q -- Will you please tell the Court if there was any entry made on September 23, 1969?

A There appears to be a withdrawal on Septemger 23, 1969 for $6,935.

Q Do you have that withdrawal slip with you, sir?

A No, I don't.

Q Did the Government request that you bring with you a copy of that withdrawal slip?

A There was no request.

Q Can you tell by looking at this ledger card whether that withdrawal was made by cash or check?

A I cannot tell. We cannot tell. We have to see the deposit slip or the withdrawal slip.

Q And the Government did not request that you bring in a withdrawal slip; is that correct, sir?

A No.

MR. APPLEMAN: I would request that the withdrawal slip be brought in to ascertain whether this withdrawal was made by cash or check.

THE COURT: Any objection?

MR. LAWYER: I have no objection.

I might point out that it seems to be fairly useless since the ledger card is here.

THE COURT: A ledger card does not tell how it was withdrawn.

MR. LAWYER: I am questioning the relevance. I have no objection to him bringing it.

MR. APPLEMAN: I think it is evident, based on the entries made on this card, that it is nothing more than an exchange, a deposited --

THE COURT: That is something you can argue to the jury later.

MR. APPLEMAN: Fine.

THE COURT: You want to know how it was withdrawn?

MR. APPLEMAN: That is correct.

THE COURT: Do you suppose it could be done by some telephone calls or something so that this gentleman doesn't have to come back here?

MR. APPLEMAN: I would be satisfied.

MR. LAWYER: I would be willing to stipulate that he communicate the information in whatever way we could work out.

MR. APPLEMAN: That would be all right.

THE COURT: Anything else for this witness?

MR. LAWYER: Not for me.

MR. APPLEMAN: One more question, your Honor.

THE COURT: Yes, of course.

Q During this period, March 31, 1969 to December 31, 1969 were there any other entries made into this account with regard to deposits and withdrawals?

A From March 31?

Q That is right. From March 31, 1969 to December 31, 1969 were there any other entries to this account other than the two entries that we just discussed?

A Except for the interest, interest charges.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: All right.

Now, Mr. Esquerra, we need to ask you to do something for us.

THE WITNESS: Yes.

THE COURT: You see the withdrawal item here?

THE WITNESS: Yes, your Honor.

THE COURT: $6,935. What we want to find out is do the records of the bank, any of them, show how it was withdrawn.

THE WITNESS: Yes, your Honor, but these are 1969 records and I know that we cannot verify -- Don't think we can verify it by telephone. It will take more time. There are three years or four years of records that would be in the archives. Our archives are out of State. It will take at least two or three days to get it, but certainly it can be done. It cannot be done by a telephone call.

THE COURT: Can you telephone to the archives and get them to send it right away?

THE WITNESS: We have never done it before, but I can try.

THE COURT: Mr. Lawyer, are you in touch with the witness?

MR. LAWYER: He does have my telephone number, your Honor.

THE WITNESS: Would you want it today, your Honor?

THE COURT: If we could.

I am just trying to setup a means of communication.

MR. LAWYER: Yes.

THE COURT: Does he have your telephone number?

MR. LAWYER: Yes.

THE COURT: Would you see if you can find out about the withdrawal and telephone the information to Mr. Lawyer's office?

THE WITNESS: I will just telephone him whether it was by cash or check?

THE COURT: Yes. Let's be sure.

MR. APPLEMAN: By cash or check, if it was by a check I want to see a copy of the check.

THE WITNESS: If you want a check -- You want to see a copy of the withdrawal slip?

THE COURT: You mean if he took $6,935. from the bank in cash or did the bank issue him a check for it?

MR. APPLEMAN: That is correct. If the bank issued him a check then we can trace it further.

THE WITNESS: At any rate, you want a copy of the withdrawal slip.

MR. APPLEMAN: Your verbal information will be enough.

THE COURT: Do you understand that?

THE WITNESS: Yes.

THE COURT: The witness is taking the originals with him, is that it?

MR. LAWYER: Yes, if that is okay with the Court.

THE COURT: All right, next witness.

[Witness excused]

MR. LAWYER: Mr. Cornelius Gallagher.

CORNELIUS GALLAGHER, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What do you do for a living, Mr. Gallagher?

A Assistant Manager, Bankers Trust Company, 1002 Madison Avenue, New York City.

Q What is the street number at that point?

A 78th Street.

Q What is your title?

A Assistant Manager, Operations.

Q How long have you been with the bank?

A Going on twenty-five years.

Q Tell us briefly what you do in operations.

A Well, I help customers with any difference in statements, do research, run personnel, take care of problems in the bank such as differences or shortages or what have you.

Q In the course of your regular duties with Bankers Trust have you become familiar with the various types of documents, files and records which are made and maintained by the bank with respect to customers' accounts?

A Yes, sir.

B8

Q I have placed before you Government Exhibit No.50 for Identification. Please look at that and tell us whether or not you recognize it?

A Yes, sir.

Q What is it?

A A signature card.

Q Is Government Exhibit 50, sir, for Identification a business record or at least a copy of a business record of Bankers Trust?

A Yes, sir.

Q Was the original document made in the regular course of the business of the bank?

A Yes, sir.

Q Is it part of the regular course of the business of the bank to make such records as the original of Government Exhibit 50 for Identification?

A Yes, sir.

MR. LAWYER: Your Honor, I offer Government Exhibit 50 for Identification. May the record reflect that

I am now showing the original documents to defense counsel.

THE COURT: Any objection?

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark it.

xx [Government Exhibit 50 received in Evidence]

Q I ask you to look at Government Exhibit 50 in Evidence and tell us the account number, sir?

A 15-4372.

Q What name was the account opened in?

A Dr. Robert L. Wolf.

Q On what date was the account opened?

A 11/21/66.

Q Is it a joint or individual account?

A Individual account.

Q What kind of account, savings or checking?

A A savings account.

THE COURT: Was that opened in 1966?

THE WITNESS: Yes, sir.

THE COURT: November 21, 1966?

THE WITNESS: Yes, sir.

Q I have placed before you, sir, Government Exhibit 51 for Identification. I ask you to take a few moments and look thru the several sheets which Government Exhibit 51 is comprised of and tell us whether or not you recognize the documents?

A Yes, sir.

Q What are the documents which comprise Government Exhibit 51 for Identification?

A They are all deposit slips, sir, to a savings account.

Q Are the various documents which comprise Government Exhibit 51 business records of the Bankers Trust Company?

A Yes, sir.

Q And were the original documents made in the regular course of the business of the bank?

A Yes, sir.

Q Is it part of the regular business of the bank to make and retain such records, sir?

A Yes, sir.

MR. LAWYER: Your Honor, we offer Government Exhibit 51. May the record reflect that defense counsel is presently looking at the originals.

MR. APPLEMAN: I am taking a little time because these records are on IBM cards. I am trying to associate them.

THE COURT: Take your time.

[Pause]

MR. APPLEMAN: I think these newfangled processes have me befuddled. I am sure Mr. Lawyer will clarify the matter with regard to the missing deposit slips.

THE COURT: Any objection?

MR.APPLEMAN: I have an objection to the IBM sheets unless it is clarified.

MR. LAWYER: The deposit tickets are original documents.

THE COURT: Are these attached sheets part of the Governments offer?

MR. LAWYER: No, your Honor.

THE COURT: Then we will just take them off.

MR. LAWYER: I think what the confusion is, if I may make this statement on the record, is that we have copies of all of the original deposit sheets. We do not at present have all of the originals. The IBM sheets account for, that is, they trace back the fact that there was once an original.

THE COURT: You will need further questions of the witness to develop that, I take it?

MR. LAWYER: We were offering the copies, your Honor, and if necessary we will go thru the lost documents and --

THE COURT: All right. In other words, all of the sheets that were shown to Mr. Appleman are offered by the Government.

MR. LAWYER: That is correct.

THE COURT: He wants to know something about the attachments and I think we need more of a record.

Q Mr. Gallagher, I ask you to look again at Government Exhibit 51 for Identification. Sir, are each of the documents in there photographic copies of original documents that were business records of the Bankers Trust Company?

A Definitely, sir.

Q At my request, sir, were you asked to find the original documents themselves?

A Correct.

Q Did you make a search?

A I did.

MR. LAWYER: May this be marked as Government Exhibit 51A, please?

xx [Government Exhibit 51A marked for Identification]

Q Mr. Gallagher, I now ask you to look at what has just been marked Government Exhibit 51A for Identification.

A Yes, sir.

Q Are those the documents you supplied in response to my request to obtain original documents?

A These are the original deposit tickets.

Q Were you able to find all of the original documents?

A No, I wasn't.

Q How many were you unable to locate?

A I believe it was three.

Q What did you locate instead, sir?

A What we call a quarterly history sheet of each account. On this particular sheet here I circled Dr.Wolf's deposits, withdrawals and interest that was in the correspondence for each given quarter.

Q Are those documents you are now referring to --

A Photostats.

Q -- called photostats or what is the name of the kind of photostat it is?

A Quarterly history sheets.

Q The quarterly history sheets reflect that there were once original documents that you cannot find?

A Definitely.

THE COURT: What were the original documents, Mr. Gallagher?

THE WITNESS: In the beginning, sir, at the first request, all of the original deposit tickets were found. We have what we call archives. Over a period of years, we don't keep them in the Branch. They go back at that time. They went back to the archives and when I went down in the morning to get the originals once more I received all of them except the three. They may have been put in a different box.

THE COURT: Three deposit slips?

THE WITNESS: That is right, sir.

THE COURT: But you say from the quarterly history sheets you can reconstruct the amouts and the dates of the three missing deposit slips?

THE WITNESS: Yes, sir.

THE COURT: I understand.

Q Were you so able to do that by looking at three of the photographic copies in Government Exhibit 51?

A Yes, sir.

Q And you determined in fact that they were copies?

A That they were the particular copies that I couldn't locate, the three of them.

MR. LAWYER: We offer 51.

THE COURT: You mean that although the originals are missing there are copies of the originals?

MR. LAWYER: That is correct.

THE COURT: How can the copies exist and the originals be missing?

THE WITNESS: On the first request by Mr. Lawyer or his partner the assistant treasurer over there did locate them, had them sent down by the archives.

THE COURT: And they were copied?

THE WITNESS: That is right. We had photostats made and sent back to archives.

THE COURT: I understand.

Q Approximately how long ago was that when the originals were requested?

A I have no idea. I got involved in this with the assistant treasurer. You know, she did the original request just for the photostats. At that time we didn't know we needed the originals, otherwise we would have kept them on hand at the Branch.

MR. LAWYER: We offer 51.

B9 THE COURT: You are offering, if I understand correctly, all of the deposit slips and you are accounting for the absence of three originals by the other sheets which are part of the offered exhibit?

MR. LAWYER: I'm sorry, your Honor. The other sheets are not part of the offering exhibits. We have accounted for the missing documents.

THE COURT: You have shown them to Mr. Appleman but you aren't offering them?

MR. LAWYER: That is correct.

THE COURT: Are we straightened out?

MR. APPLEMAN: In other words, what is being offered in evidence are the original deposit tickets?

THE COURT: No, they have photographic copies of the original deposit slips. Maybe you had better take a look at the very document which is going to be marked.

MR. APPLEMAN: You have original deposit tickets for all except three.

THE COURT: Three. And he shows you the data as to those three on the quarterly history sheets, but he is not offering the quarterly history sheets.

MR. APPLEMAN: May I approach the bench? What we have here is the original documents, photocopies of original documents. I haven't seen anything to evidence -- Which I have no objection about, your Honor -- Now we have three deposit tickets going into evidence the originals for which I have not seen.

THE COURT: That is right.

MR. APPLEMAN: I think what we should determine is who made the copies, when they were made and --

THE COURT: You can cross-examine on that.

MR.APPLEMAN: Okay, your Honor.

THE COURT: All right. Do you object as to the three of them?

MR. APPLEMAN: Yes, your Honor.

THE COURT: Overruled. Mark it, Mr. Clerk.

xx [Government Exhibit 51 received in Evidence]

Q Mr. Gallagher, please read the account number to which Government Exhibit 51 documents refer.

A 15-4372.

Q In whose name is that account?

A Dr. Robert L. Wolf.

Q Do the documents which comprise Government Exhibit 51 in Evidence refer to the same account to which the signature card which is Government Exhibit 50 refers?

A Yes, sir.

Q Would you read the various dates and the sum total of the deposits on each of the documents?

A November 21, 1966. This was a new account in the amount of $2,331.60.

February 28, 1967, various checks totaling $382.52.

March 8, 1967, various checks totaling $240.

March 15, 1967, various checks totaling $1,597.81.

April 4, 1967, various checks totaling $155.

April 12, 1967, various checks totaling $160.

April 17, 1967, various checks totaling $56.50.

April 20, 1967, various checks totaling $407. -- It looks like $477. If you just give me a moment I will verify it. $417. even.

April 27, 1967, two checks totaling $40.

July 28, 1967, two checks totaling $1,375.

July 28, 1967, various checks totaling $790.41.

October 14, 1969, two checks totaling $12,958.14.

October 30, 1969, one check totaling $2,306.57.

Q What kind of account was that, sir?

A A savings account.

Q Was it joint or individual?

A Individual.

MR. LAWYER: I have no more questions, your Honor.

THE COURT: All right, Mr. Appleman.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q During the period November 21, 1966 to December 31, 1969 were there any withdrawals made from this account?

A That would show on the quarterly sheet. I wouldn't know offhand. There was a withdrawal definitely. The amounts, I don't know.

Q Were these requested by the Government at the time you were requested to appear?

A No, sir, they weren't, just deposit tickets.

MR. APPLEMAN: At this time I would like to make a request for all the withdrawals from this account and whether these withdrawals were made by cash or check and if made by check, photocopies or the orignal check.

THE COURT: Have you subpoenaed these?

MR. APPLEMAN: I? No, your Honor.

THE COURT: Does the Government have any objection?

MR. LAWYER: I do question the relevance. If he didn't subpoena it earlier apparently he didn't consider it relevant. It is just a bank deposits case.

MR. APPLEMAN: Included in the bank deposits are withdrawals.

THE COURT: It is a part of the defense, if it is anything, and I am prepared to get it for you if we can. I am wondering if it shouldn't be, though, made a part of your case. In other words, it has nothing to do with the direct examination of the witness.

MR. APPLEMAN: No, it has nothing to do with it. The only thing it would do is certify to the effect that these withdrawals were made from the account.

THE COURT: It is obviously a mechanical problem that we will have with all the Government witnesses. There is no reason on earth why the Government should have asked him to bring it because as far as the Government is concerned it is irrelevant to the Government's theory of the case. If anything, it is part of the defense.

Now, as I say, I am prepared to have you get it. What is it that you want?

MR. APPLEMAN: The withdrawals from this account.

THE COURT: All withdrawals?

MR. APPLEMAN: That is right, just during this period, your Honor.

THE COURT: What periods?

MR. APPLEMAN: November 21, 1966 to December 31,1969.

THE COURT: November 12, 1966 to December what?

MR. APPLEMAN: December 31, 1969.

THE COURT: You want all withdrawals?

MR. APPLEMAN: That is right.

THE COURT: What do you want, the amounts and the dates?

MR. APPLEMAN: I want the dates, the amounts and if by bank check the bank check itself.

THE WITNESS: On the withdrawals, it is not done by check. These withdrawals are all withdrawal tickets. In other words, the customers would come in and withdraw money from the bank. No checks are involved.

THE COURT: Because it is a savings account?

THE WITNESS: Yes, sir, a savings account.

THE COURT: Mr. Gallagher, how can we go about getting the withdrawal tickets from this account?

THE WITNESS: I will have to go back again to the records, the archives. The only reason I brought down the quarterly history sheet for Mr. Lawyer was because of the missing deposit tickets.

B10

THE COURT: I understand. How long would it take to do this?

THE WITNESS: I don't know, your Honor. It is time consuming. I might have had time to find the other three originals, but I was pressed for time.

THE COURT: I want to do it in a way that is as convenient for the bank as possible, but what we need are the withdrawal tickets for this period -- You have it in mind?

THE WITNESS: Yes, sir.

THE COURT: -- from the opening of the account to the end of 1969. Could you deliver the withdrawal tickets to Mr. Lawyer as soon as you find them?

THE WITNESS: I certainly will. I could have pulled these tickets at the time of deposits.

THE COURT: Of course. We don't want to holdup the trial of the case. Could you ask them to do it as rapidly as possible?

THE WITNESS: As soon as I get back to the office I will work on them myself.

THE COURT: Would you let Mr. Lawyer's office know what the expected length of time will be and maybe it will be possible, if you send them to Mr. Lawyer's office for you not to come back.

Is it necessary for him to come back?

MR. APPLEMAN: No, your Honor.

THE COURT: Then would you let us know thru Mr. Lawyer's office what progress you are making and when they will have them?

THE WITNESS: Yes.

THE COURT: Then you can send them or bring them to Mr. Lawyer.

THE WITNESS: You want the originals?

THE COURT: The originals, and if you want the originals back we will see that eventually they are returned to you.

THE WITNESS: They must be returned.

THE COURT: In that way it won't be necessary for you to come back.

Do you have any other questions, Mr. Appleman?

MR. APPLEMAN: No further questions.

THE COURT: Do you understand, Mr. Gallagher?

THE WITNESS: Yes, sir, your Honor.

THE COURT: You may be excused now.

[Witness excused]

THE COURT: Next witness.

MR. LAWYER: Mrs. Carrie Mitnick.

CARRIE MITNICK, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What do you do for a living, m'am?

A I am a saleslady.

Q Where?

A In Florida.

Q What town?

A Hollywood.

Q Do you know a Dr. Robert L. Wolf?

A Yes.

Q Do you see that individual in court now?

A Yes.

Q Where is he?

A [Indicating]

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes.

Q How did you come to meet Dr. Wolf?

A We were patients of his.

Q Who are "we"?

A My husband and myself.

Q I ask you to look at Government Exhibit 114 which has been placed before you. Do you recognize the documents which make-up Government Exhibit 114 for Identification?

A Yes.

Q What are they?

A These are my checks that I made for medical services to Dr. Wolf.

Q Is your signature on these checks, m'am?

A Yes.

MR. LAWYER: Your Honor, I offer Government Exhibit 114.

THE COURT: All right, show it to Mr. Appleman.

MR. APPLEMAN: No objection.

THE COURT: All right, mark it.

xx [Government Exhibit 114 received in Evidence]

THE COURT: Mr. Lawyer, have you counted the number of checks?

MR. LAWYER: Yes.

THE COURT: How many checks are there in Exhibit 114?

MR. LAWYER: 14 checks, your Honor.

THE COURT: All right, 14 checks.

Q Mrs. Mitnick, would you simply read the years and the amount of the checks?

A Each one?

THE COURT: This is from 114?

THE WITNESS: Yes.

Q Each one.

A 1968, $105.67, $35., the same year $35., $70., $970., $70., $70., $70.

Then for 1969: $35., $35., $190., $35., $35., and $100.

MR. LAWYER: I have no more questions, your Honor.

THE COURT: All right, Mr. Appleman.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mrs. Mitnick, these checks were made for payments of services rendered to you by Dr. Wolf; is that right?

A Yes.

Q Were these services rendered to you or your husband?

A Actually all but the last one was for my husband. Then I became a patient and that last one was mine.

Q I notice that you read these checks off with regard to years and not dates.

MR. APPLEMAN: If it please the Court, may I read the dates of the checks?

THE COURT: If you want to read the dates of the checks you may. They are in evidence.

MR. APPLEMAN: Government Exhibit 114, the dates of the checks are January 5 for $105., February 9 for $35., March 25 for $35., May 6 for $70., July 18 for $970., September 3 for $70., September 16 for $70., December 2 for $70.

In 1969, January 28, $35.; March 24, $35.; May 5, $109.; June 16, $35.; August 4, $35.; and December 24, $100.

Q These payments, therefore, were made over a period of two years of services rendered to you by Dr. Wolf?

A Right.

Q Did the Doctor at anytime request payments be made to him in cash?

A No.

Q Did the Doctor at anytime request you not to claim this as a deduction on your income tax return?

A No.

Q Did you in fact claim this as a deduction on your income tax return?

A These checks?

Q Yes.

A Yes.

Q To your knowledge, were these checks cashed or deposited?

A I don't know. All I know is I received the cancelled checks.

MR. APPLEMAN: I think I should bring to the Court's attention that each one of these checks were deposited to a bank account and --

THE COURT: Wait. That is argument to the jury.

MR. APPLEMAN: It is a fact, your Honor, from the --

THE COURT: Will you please stop it? This is no time to be arguing the case. Let's go on. The documents are in evidence.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Anything else, Mr. Lawyer?

MR. LAWYER: No.

THE COURT: Thank you. You may be excused.

[Witness excused]

THE COURT: Next witness.

MR. LAWYER: William Bray.

WILLIAM BRAY, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation, Mr. Bray?

A I am the manager of the Royal Globe Insurance Companies.

Q Where is that?

A 150 William Street, New York City.

Q How long have you been with the Royal Globe?

A It will be twenty-seven years February.

Q Just what is your position there?

A I am the national manager of the claim and loss department.

Q When did you become the manager, sir?

A In 1968.

Q What was your job before that?

A I was the assistant manager since April 1966.

B11 Q Within the department itself, are you the supervisor?

A Yes, in the claim and loss department.

Q Does the work of thecclaim and loss department, sir, involve Workmen's Compensation payments at all?

A Yes, it does.

Q Just what means are used to make payments when the Workmen's Compensation claims are made?

A We use what we call a draft, which is equivalent to a check in payment of benefits or in payment of medical bills.

Q I have placed before you Government Exhibit 103 for Identification. I ask you to look at it and tell the Court and jury whether or not you recognize Government

Exhibit 103?

A Yes, I do.

Q What are the documents which comprise that exhibit?

A These are drafts issued to a Dr. Robert Lawrence Wolf.

Q Now, sir, those are in fact photographic copies; is that correct?

A That is correct.

Q What happened to the originals?

A The originals were destroyed. We have a procedure in our company that they are destroyed seven years after payment.

Q Can you identify the signatures on the two checks, that is the copies which comprise Government Exhibit 103?

A Yes, I can. One has my signature and the other one is a Nancy Mirabella.

Q How do you know it is her signature?

A Well, I was her supervisor for many, many years and I know her signature.

MR. LAWYER: I offer it.

THE COURT: There are two drafts in this exhibit?

MR. LAWYER: Yes.

THE COURT: All right.

MR. LAWYER: I offer Government Exhibit 103.

THE COURT: Please show it to Mr. Appleman. Better show him the very document that is offered.

MR. APPLEMAN: Your Honor, I object. I object to the fact that it is not original documents.

THE COURT: But Mr. Bray, I believe I understood you to say that the originals under your company policy had been destroyed.

THE WITNESS: Yes, we usually destroy them after seven years.

THE COURT: All right, overruled. Mark it.

xx [Government Exhibit 103 received in Evidence]

Q Were the documents which comprise Government Exhibit 103 paid, sir?

A Yes, sir.

Q Would you read the dates on which the checks were issued and the amounts?

A The first draft was issued on February 15, 1966 for $285.34 and it was paid on February 24, 1966.

The second draft was issued on October 21, 1966 in the amount of $569.75, and this was paid on November 22, 1966.

THE COURT: Mr. Bray, are these papers that you looked at microfilm documents?

THE WITNESS: They are photostatic copies of the originals, yes, sir.

THE COURT: Are they kept on a microfilm?

THE WITNESS: No, sir.

THE COURT: In other words, you keep photostat copies but you don't keep the originals?

THE WITNESS: We keep the originals for seven years and the first summons was got on this in 1972 and the photostatic copies were made then from the originals.

THE COURT: In other words, somebody in the Internal Revenue Service asked you about these drafts?

THE WITNESS: Yes, sir.

THE COURT: In the seven year period?

THE WITNESS: Yes, sir.

THE COURT: Before company policy had caused them to be destroyed?

THE WITNESS: Yes, sir.

THE COURT: So the reason they happen to have photostatic copies is because somebody asked you to make copies?

THE WITNESS: Yes, sir.

THE COURT: I understand.

MR. LAWYER: I have no more questions.

THE COURT: Mr. Appleman?

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mr. Bray, was a 1099, which is an information report required by the Government for all payments over $600. made to an independent contractor, filed with regard to these checks?

A I'm sorry. I can't answer that question.

Q Is it the usual practice for the company to do so?

A Yes, sir, it is the usual practice that if we pay more than $600. we do make a filing with the Government.

Q In view of the fact that these two checks are in excess of $600., was a form 1099 filed with the Government?

A To my knowledge -- I don't have that direct knowledge. I am sorry.

Q Would anyone in the companies have that knowledge?

A Yes, sir.

Q Who would that be, sir?

A That would be John Imbeninato in the statistical department.

MR. APPLEMAN: Your Honor, in an effort to save time I request Mr. Bray to contact Mr. Imbeninato to determine if there is a 1099 or if there was a 1099 filed by the company.

THE COURT: Any objection, Mr. Lawyer?

MR. LAWYER: I do object if we are going to have --

THE COURT: I will authorize a subpoena to be issued for him if you want him as part of your case.

MR. LAWYER: Suppose we simply stipulate to whatever he wants. If one was filed or one was not filed, I don't care. I will stipulate to whatever the defense wants in that regard.

THE COURT: What is it that you want to prove?

MR. APPLEMAN: The fact that there were 1099's received by the defendant and that in the normal course of business these 1099's were submitted to the accountant.

MR. LAWYER: I will stipulate just that they were received.

MR. APPLEMAN: Okay.

THE COURT: By the Internal Revenue Service?

MR. APPLEMAN: In other words, by the Internal Revenue Service and by Dr. Wolf. A 1099 is similar to a W-2 Form except for the fact that no withholding tax or social security is deducted.

THE COURT: We are getting into a terrible lot of technicalities.

MR. APPLEMAN: I am sorry.

THE COURT: What you want to show is that the Royal Globe made a report to the Internal Revenue Service and to

Dr. Wolf that they have paid him in the year 1966 more than $600.?

MR. APPLEMAN: These two checks, your Honor, that is correct.

THE COURT: Any objection to that?

MR. LAWYER: I have no objection to that.

THE COURT: Then it is not necessary to do anything more about it. Mr. Lawyer says he stipulates that that is the fact.

MR. APPLEMAN: Thank you.

THE COURT: Any more questions?

MR. APPLEMAN: No more questions.

THE COURT: All right, thank you, Mr. Bray, you may be excused.

[Witness excused]

THE COURT: All right, next witness.

MR. LAWYER: Edmund J. Cavanagh.

[At this point Mr. Fruchtman was present]

EDMUND J. CAVANAGH, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What do you do for a living, sir?

A I work for ITT Corporation, International Telephone & Telegraph. I am an accounts payable supervisor.

Q Keep your voice up so we can hear you in the back row.

A Right.

Q You said you worked for ITT. Is that International Telephone & Telegraph?

A That is correct.

Q Where are the world headquarters of ITT located?

A 320 Park Avenue, New York City.

Q What address do you personally work at?

A At the world headquarters.

Q You stated that you were the accounts payable supervisor, I believe?

A That is correct.

B12 Q Tell us just briefly what your job is, that is, what you do in that capacity.

A I am responsible for all cash disbursements in settlement of vendor bills for services rendered, purchases, also checks issued on interest payments, bank loans, etc.

Q Do you issue checks yourself or is it done under your direction?

A It is done under my direction.

Q Do you know whether International Telelphone &

Telegraph retains private physicians on a consulting basis?

A Yes, they do.

Q How does it work?

A Briefly, in many cases it is for physical examinations, periodic physical examinations of the employees and also if any employee is injured at work he may be sent to a private physician for treatment.

Q How is the physician paid?

A He will render a bill for services. Then a check will be issued in settlement of that.

Q Does ITT make and maintain files and records pertaining to these bills and payment?

A Yes, we do.

Q Are you familiar with these various types of records for paying medical consultants?

A Yes, sir.

Q Have you become familiar with such records as a result of the regular course of your duties?

A That is correct.

Q I ask you to look at Government Exhibit No.70 for Identification, which has been placed before you. Do you recognize this, sir?

A Yes, sir.

Q What is it?

A It is a bill for services rendered from Dr. Lawrence Wolf.

Q Did you supply the document to the United States Attorney's office in response to a subpoena?

A Yes, I did.

Q Where did you get the document from?

A From our archives.

Q I show you Government Exhibit 71 for Identification. I ask you to look at the several documents which make-up Government Exhibit 71 and tell us whether or not you recognize it?

A Yes, I do recognize it.

Q What are the documents which comprise Government Exhibit 71 for Identification?

A They are bills for services rendered from Dr. Wolf.

Q Did you personally produce those documents to the United States Attorney's office?

A Yes, I did.

Q From where did you obtain them?

A Again, I obtained them from our archive files.

Q I show you Government Exhibit No.72 for Identification. I ask you to look at the various documents which make-up Government Exhibit 72 and tell the Court and jury whether or not you recognize them?

A Yes, I do recognize them.

Q What are the documents which make-up Government Exhibit 72 for Identification?

A They are bills for services rendered from Dr. Robert Wolf.

Q Did you personally supply those documents to the United States Attorney's office?

A Yes, I did.

Q From where did you obtain them?

A Our archive files.

MR. LAWYER: We offer 70, 71 and 72.

THE COURT: Exhibit 70 is one bill; is that right?

THE WITNESS: Two, sir.

THE COURT: And Exhibit 71 consists of how many?

THE WITNESS: Seven.

THE COURT: And Exhibit 72 is how many?

THE WITNESS: Twenty-six.

THE COURT: All right, show them to Mr. Appleman, please.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark them.

xx [Government Exhibits 70, 71 and 72 received in Evidence]

Q Mr. Cavanagh, would you read the name of the person who submitted the bills insofar as the letterhead indicates?

A It indicates Robert Lawrence Wolf, M.D.

Q Would you read the date of the bills on Government Exhibit No.70 and the amounts charged?

A April 6, 1966 is the date of the bill. The amount charged was $200. The second bill is July 1, 1966. The amount charged is $50.

Q I ask you to look at Government Exhibit 17 in Evidence. Who submitted the bills insofar as the letterhead of the documents show?

A Robert Lawrence Wolf, M.D.

Q Would you read the dates of the bills and the amounts shown?

A May 1, 1968, $100.; August 1, 1968, $280.; September 3, 1968, $210.; October 1, 1968, $420.; October 8, 1968, $235.; November 1, 1968, $354.40; December 2, 1968, $280.

That is that one.

Q I show you Government Exhibit 72 in Evidence. Who submitted the bills insofar as the letterhead shows, sir?

A Robert Lawrence Wolf, M.D.

Q Would you read the dates and the amounts?

A July 6, 1969, $210.; July 7, 1969, $35.;

February 3, 1969, $280.; February 3, 1969, $335.; February 28, 1969, $35.; April 2, 1969, $560.; April 2, 1969, $300.; March 3, 1969, $370.; October 7, 1968, $300. The bill submitted was for $750.

April 30, 1969, $35.; May 1, 1969, $70.; June 1, 1969, $280.; June 1, 1969, $105.; May 29, 1969, $300.; June 20, 1969, $200.

The next bill was not dated. It is $211.

Q Does that bill indicate --

A It indicates or states "For professional services for," but not the date of billing.

Q What is next?

A June 4, 1969, $70.; June 11,1969, $70.; June 16, telephone call, $1.; June 18, 1969, $70. The total amount is $211.

August 1, 1969, $140.; August 1, 1969, $50.; September 1, 1969, $280.; September 1, 1969, $495.; October 1, 1969, $435.; October 1, 1969, $385.; November 1, 1969, $370.; November 1, 1969, $525.; December 1, 1969, $420.; December 1, 1969, $105.

That is all the bills rendered.

Q I show you Government Exhibit 70A for Identification. Do you recognize 70A, sir?

A Yes, I do.

Q What is 70A?

A 70A is a vendor file, copies of checks issued in payment for services.

Q What year, sir?

A 1966.

Q First of all, how many documents are on 70A?

A Two documents.

Q Are the two documents which make-up Government Exhibit 70A for Identification business records of ITT?

A Yes, they are.

Q Were those documents made in the regular course of the business of ITT?

A Yes, they were.

Q Is it part of the regular course of business of ITT to make such documents, sir?

A Yes, it is.

B13 THE COURT: Mr. Cavanagh, would you mind describing these two documents for us again? I am a little mixed up.

MR. LAWYER: I'm sorry.

Q You used the term vendor file copy. What is a vendor file copy?

A A vendor file copy is a copy of the check that was issued in payment of services. It is maintained --

THE COURT: To put it simply, they are copies of checks that you issued. Are they issued to Dr. Wolf?

THE WITNESS: Yes, they are.

THE COURT: All right.

When you say it is a copy of a check, you mean it is a carbon copy of the original check, sir?

THE WITNESS: That is correct.

Q I show you Government Exhibit 71A for Identification. Do you recognize the documents which comprise 71A, sir?

A Yes, I do.

Q How many separate documents are in 71A?

A Seven separate documents.

Q What are the documents in 71A, sir?

A Again, they are the file copies of checks issued to Dr. Wolf.

Q What year?

A 1968.

Q I show you Government Exhibit 72A, sir. What are the documents which make-up 72A, sir?

A Again, they are the file copies of checks issued to Dr. Wolf.

Q For what year?

A 1969.

Q With respect to both 71A and 72A, sir, are the various documents which make-up those exhibits business records of International Telephone & Telegraph?

A Yes, they are.

Q Were those various documents made in the regular course of the business of ITT?

A Yes, they were.

Q Is it part of the regular course of the business of ITT to make and retain such records?

A Yes, it is.

MR. LAWYER: We offer 70A, 71A and 72A.

THE COURT: Will you show the exhibits to Mr. Appleman?

MR. LAWYER: Yes.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

xx [Government Exhibits 70A, 71A and 72A received in Evidence]

Q Mr.Cavanagh, I haveplaced before you Government Exhibit 70B for Identification. Do you recognize the documents which make-up 70B?

A Yes, I do.

Q What are those documents?

A They are cancelled checks issued to Dr. Robert Wolf.

Q How many such documents are there in that exhibit?

A There are two.

Q Are the cancelled checks which make-up Government Exhibit 70B the orginal documents of which the copies are Government Exhibit 70A?

A Yes, they are.

Q I have placed before you Government Exhibit 71B. Can you identify the documents which make-up 71B for identification, sir?

A Yes, I can.

Q What are they?

A They are cancelled checks issued to Dr. Robert Wolf.

Q How many such documents are included in Government Exhibit 71B?

A There are seven.

Q Are the seven documents of which 71B is made up of the original checks for which the copies of the checks are Government Exhibit 71A?

A Yes, they are.

Q I show you Government Exhibit 72B for Identification. Can you identify the documents which make-up 72B, sir?

A Yes, I can.

Q What are they?

A They are cancelled checks issued to Dr. Robert Wolf.

Q Tell us how many such documents are included in

Exhibit 72B for identification?

A There are sixteen.

Q I ask you to look at Government Exhibit 72B, sir, and ask you whether or not 72B is made up of the original checks for which Government Exhibit 72A are the copies?

A Yes, they are.

THE COURT: They are 16 of the 26?

MR. LAWYER: Yes, sir.

THE COURT: Is that right, there were 26 copies and there are 16 originals?

Q Is that correct?

A No. No, your Honor.

MR. LAWYER: There are 26 bills.

THE WITNESS: 26 bills submitted, 16 check were issued.

THE COURT: How many documents are there in Exhibit 72A?

THE WITNESS: 16

THE COURT: I'm sorry. All right.

Q Is it your testimony, sir, that there were 26 bills but some of those bills were combined and only one check was made out?

A That is correct.

THE COURT: So 72B are the 16 original checks of which 72A are the 16 copies?

THE WITNESS: That is correct.

THE COURT: All right.

Q Prior to testifying here today, sir, did you or your office make a determination that all the bills which were submitted and which you have referred to in Government Exhibits 70, 71 and 72 were paid thru the various checks which you have testified about today?

A Yes, I did.

MR. LAWYER: We offer, first of all, 70B, 71B and 72B. I will show them to Mr. Appleman, your Honor.

THE COURT: All right.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

xx [Government Exhibits 70B, 71B and 72B received in Evidence]

MR. LAWYER: I have no more questions, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mr. Cavanagh, at the inception of your testimony you testified to the effect that the Doctor's services were serivces rendered to ITT;by a physician would normally be in the course of physical examinations; is that correct, sir?

A Yes.

Q For the officers of the corporation to see that they are in good health; these are annual physicals obtained by the corporation to see that the health of the officers is good and that they are in good shape?

A Yes.

Q More or less?

A Yes.

Q Did these services rendered by the Doctor also involve tests which would have to be performed?

A I am not qualified to answer that question. I only know the services that were submitted --

Q --Were rendered. Fine.

In 1966 there was only $250. paid to the Doctor, so there wouldn't be any question pertaining to a 1099.

A That is correct.

Q However, for the year 1968 in which there was an amount paid to Dr. Wolf in excess of $600., was there a 1099 issued to Dr. Wolf for those payments?

A I believe there was.

Q Would it be normal company policy to issue these 1099's when a payment is made in excess of $600.?

A Yes, it is.

Q In 1968 a 1099, which is information as to a tax return, was filed with the Internal Revenue Service and a copy mailed to Dr. Wolf.

A Yes.

Q For the year 1969 we have a similar situation. Payment to Dr. Wolf again exceeded the $600. required for the 1099.

A That is correct.

Q Therefore for 1969 a 1099 was sent to the Internal Revenue Service and a copy of that mailed to Dr. Wolf?

A That is correct.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Anything else?

MR. LAWYER: No, sir.

THE COURT: Thank you, Mr. Cavanagh, you may be excused.

[Witness excused]

B14 MR. LAWYER: Monique Jay.

MONIQUE JAY, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation, Miss Jay?

B14

A I am a secretary.

Q Where?

A Temas Magazine.

Q Do you know a person named Dr. Robert L. Wolf?

A Yes, I do.

Q Do you see that person in court?

A Yes, sir, he is right there.

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes.

Q Have you ever visited him as a patient, ma'am?

A Yes, I have.

Q I ask you, Miss Jay, to look at Government Exhibit No. 112 for identification. Do you know what those several documents in that exhibit are, ma'am?

A Yes, they are checks.

Q Do you recognize the signature on the several checks, ma'am?

A Yes, I do.

Q Whose signature?

A Mine.

Q How many such checks are there in the exhibit?

A Well, there is one from 19 --

Q Just count the physical number of the checks.

How many are there on the sheet?

A Five checks.

Q Did you give these checks to Dr. Wolf for payment of medical fees, madam?

A Yes, those checks went for that.

MR.LAWYER: We offer Government Exhibit 112.

MR. APPLEMAN: No objection.

THE COURT: All right, mark it.

xx (Government's Exhibit 112 was received in evidence.)

Q Miss Jay, were all of the checks which constitute Government's Exhibit 112 issued in the year 1969?

A No, there is one from 1967.

Q What date in 1967?

A January 16th.

Q January 16, 1967?

A Yes.

Q And the remaining four were all for 1969?

A That is right.

Q Are all of the checks for $15, ma'am?

A That is right.

Q Were they all returned to you as being paid?

A That is right.

Q Did you ever make any cash payments to Dr. Wolf?

A Maybe I did once, but I don't recall.

MR. APPLEMAN: I will object.

THE COURT: I will permit it. I will have to ask you to speak up so everyone can hear.

Did you get an answer, Mr. Reporter?

(Record read.)

Q You can't recall whether you made it or how much?

A I don't recall how many times I made it.

Q You are certain you did make cash payments?

A Right.

THE COURT: Any other questions, Mr. Lawyer?

MR. LAWYER: I am sorry. Thank you.

THE COURT: All right, Mr. Appleman.

CROSS EXAMINATION

BY MR. APPLEMAN:

Q In other words, you cannot state for certain whether any cash payments were made to the doctor?

A If I can state for certain?

Q Yes.

A No, I can't.

MR. LAWYER: Objection. She said she couldn't state how many.

THE COURT: She can correct it if it is wrong. I will permit it. Let's go on.

Q Did the doctor at any time request that you pay him in cash for services rendered?

A No, he did not.

MR. APPLEMAN: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. LAWYER:

Q Is it your testimony, Miss Jay, that you did or did not make any cash payments at one time or another?

MR. APPLEMAN: Objection.

(Overruled.)

A Well, it was a long time ago, so I can't make a statement for usre. I don't really know for sure.

Q Whether you ever made a cash payment or not?

A No.

MR. LAWYER: No further questions.

MR. APPLEMAN: No further questions.

THE COURT: Thank you, Miss Jay. You may be excused.

(Witness excused.)

THE COURT: Mr. Foreman and ladies and gentlemen, suppose we take our morning recess and rest for a minute. The jury may retire.

(Jury left the courtroom.)

THE COURT: Mr. Clerk, we will take a few minutes recess.

THE CLERK: The Court will take a short recess.

(Recess.)

(Jury present.)

THE COURT: All right, Mr. Lawyer.

MR. LAWYER: The government calls Anthony Zeiss.

ANTHONY JOHN ZEISS, called as a witness in behalf of the government, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Are you employed, Mr. Zeiss?

A I am.

Q By whom?

A Barclays Bank of New York.

Q B-a-r-c-l-a-y-s?

A Right.

Q Where are the main headquarters in New York or Barclays Bank?

A At 200 Park Avenue in the Pam Am Building.

Q Where are the world headquarters of Barclays Bank?

A In London.

Q Is it known as The Barclays Bank of England?

A The parent company is Barclays Bank Limited.

There are various subsidiaries, one of which is Barclays Bank of New York.

Q What address do you personally work at?

A At 300 Park Avenue, New York City.

Q What is your position there?

A I am management assistant presently.

Q How long have you been doing that?

A For 16 months now.

Q Did you work for Barclays Bank elsewhere before working in New York?

A I did. I come from South Africa. I worked there for 14 years with Barclays Bank.

Q Were your duties in South Africa substantially similar to your duties in the New York Branch?

A Very much so, yes.

Q Are the operations more or less the same, sir?

A The terminology is slightly different but the operations are the same.

Q As part of your duties at Barclays Bank in New York, are you familiar with the procedures, the files and records pertaining to customers checking accounts?

A Yes, I am.

Q How did it happen that you are familiar with such documents and procedures?

A Well, I had worked in that particular department and basic training, general business routine over the 14 years in the bank has given me this experience, this know-how.

Q Mr. Zeiss, I have placed before you Government Exhibit 40 for identification. Do you recognize that document, sir?

A Yes, I do.

Q What is it?

A This is what we call a specimen signature card, for a checking account at the bank.

Q Is Government Exhibit 40 a business record of Barclay's Bank of New York?

A It is, yes.

Q Was the document made in the regular course of the business at the bank?

A Yes, it would have been.

Q Is it part of the regular course of the business of the bank to make and retain such a document, sir?

A Yes, it is.

Q To what customer does Government Exhibit 40 pertain?

A To one Robert Wolf.

Q Is there a signature on the document, sir?

A Yes.

Q What does it purport to be, that is, that signature?

A The signature of Robert Wolf.

MR. LAWYER: Your Honor, we offer Government Exhibit 40.

THE COURT: All right.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark it.

MR. LAWYER: May the record reflect that Mr. Zeiss looked at the original document itself. Defense counsel has stipulated that we may mark into evidence a photographic copy of that original.

THE COURT: All right.

xx (Government's Exhibit 15 was received in evidence.)

Q On what date was the account opened, sir?

A December 11, 1968.

eob 14

B15

Q Are you able to tell from Government Exhibit 40 whether or not it was a joint or an individual account?

A This is an individual account.

Q What is the account number?

A 051743566.

Q What was the address of Dr. Wolf, sir, when he opened the account insofar as Government Exhibit 40 shows?

A Snug Harbor, Candlewood Lake, Danbury, Connecticut.

Q Did he also give another address?

A Yes, 20 East 74th Street, New York.

Q Was this a checking account or a savings account?

A Checking account.

Q I have placed before you Government Exhibit 41 for Identification. Tell us whether or not you can identify Government Exhibit 41, sir?

A Yes, I can.

Q What is it?

A This is the bank ledger copy of the customer's statement of account.

Q Pertaining to whose account, sir?

A To Dr. Robert Wolf.

Q Does Government Exhibit 41 -- That is what you referred to as a ledger copy -- pertain to the very same account number which you read off Government Exhibit 40?

A Yes, it does.

Q What is a ledger copy?

A A ledger copy is a bank's exact copy of the statement of account which a customer receives at least once monthly.

Q And the bank keeps a copy of that statement?

A Right.

MR. LAWYER: We offer Government Exhibit 41.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right.

What period is it or what is the date of it? Does it have a date?

MR. LAWYER: Yes, I was going to read it afterwards, your Honor.

THE COURT: All right.

xx [Government Exhibit 41 received in Evidence]

Q What is the date, sir, of Government Exhibit 41, that is, what period does it pertain to?

A December 11, 1968 to December 31, 1968.

Q Would you read off the deposits that were put into the account during that period?

A On December 11 there was a deposit of $90., $666.13 and $1,004.40. On December 12 the deposit of $1,460. and $937.50, and on December 16 a deposit of $41,275.

Q I show you Government Exhibit 41A for Identification. What is 41A, sir?

A There are six credits to Dr. R.L. Wolf's checking account.

[Mr. Fruchtman was present in the courtroom]

Q Do the various documents on Government Exhibit 41A refer to the same account as does Government Exhibit 40?

A Yes, they do.

Q What are the dates, sir, to which 41A refers?

A December 11, 1968, $90.; December 16, 1968, $937.05; and December 16, $41,275.; December 12, 1968, $666.13; and December 12, 1968 $1,004.40, and December 12, 1968, $1,460.

Q Do the credit slips which comprise Government Exhibit 41A, sir, refer to the ledger cards?

A Yes, they do.

Q What exhibit number is the ledger card, sir?

A 41.

MR. LAWYER: We offer 41A.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark it.

xx [Government Exhibit 41A received in Evidence]

Q Sir, you have before you Government Exhibit 42 for Identification. Can you identify that?

A These are also bank ledger copies of the customer's account.

Q What customer, sir?

A Dr. Robert Wolf.

Q Does that refer to the same account as does the signature card, Government Exhibit 40?

A Yes, it does.

Q Sir, first of all, how many such documents are there, how many ledger cards are there in Government Exhibit 42?

A Twelve ledger copies.

Q Beginning with the first one, sir, would you read the period that it covers and the deposits for that period?

A It covers the period December 31, 1968 to January 31, 1969. The deposits were on January 8, $425.; on January 15, $1,385., $300. and $315.; January 22.

Q Would you stop for just a moment, sir?

Continue reading.

A January 22, $5,000.; January 29, $1,464.15.

The second one covers the period January 31, 1968 to February 28, 1969. There was a deposit of $3,000. on February 19 and $635. on February 26.

The third exhibit is the period February 28, 1969 to March 31, 1969. There is a deposit of $2,111. on March 5th and $23,207.16 on March 19.

The next one is the period March 31, 1969 to April 30, 1969, the deposit of $1,170. on April 2, $2,135. on April 15, and $2,125.50 on April 30.

MR. LAWYER: We offer 42, your Honor.

[Pause]

MR. LAWYER: That offer is withdrawn at this time.

THE COURT: All right.

Q I show you Government Exhibit 42A for Identification, Mr. Zeiss. Can you identify that?

A These are deposits to Dr. Robert L. Wolf's checking account to Barclays Bank.

Q For what year?

A The majority of them are 1969. There are two for 1970.

Q What is the date in 1970?

A August 6, 1970 and August 7, 1970.

Q Sir, would you count the number of sheets, that is deposit slips, please, in 42A for identification?

A 24

Q Are the various deposit slips business records of Barclays Bank of New York?

A They are.

Q Were they made in the regular course of the business of the bank?

A They would have been.

Q Is it part of the regular business of the bank to retain such records?

A Yes, it is.

MR. LAWYER: Your Honor, we offer 42A.

THE COURT: As to deposits in 1970? I am a little puzzled about that.

MR. LAWYER: Your Honor, we will connect it.

MR. APPLEMAN: Your Honor, as stated, the only objection I would have is as to 1970 items.

THE COURT: I will take it subject to a motion to strike it out if Mr. Lawyer does not connect it. He says he will.

Mark it, Mr. Clerk.

xx [Government Exhibit 42A received in Evidence]

B16 MR. LAWYER: At this time I also reoffer Government Exhibit 42, the offer of which I withdrew.

THE COURT: Yes. Have you seen it?

MR. APPLEMAN: I didn't see the original of the first two months.

MR. LAWYER: Here they are.

THE COURT: Take a look at them.

MR. APPLEMAN: I believe that at the initial offering of Government Exhibit 42 the period was from January to December. The originals here are only from July to December.

MR. LAWYER: I am offering the originals for whatever they are worth, your Honor.

THE COURT: I understand. I will take it. Mark it.

xx [Government Exhibit 42 received in Evidence]

THE COURT: Exhibit 42 consists of twelve copies of statements; is that right?

MR. LAWYER: I believe it is fewer.

MR. APPLEMAN: I believe it is six, your Honor.

MR. LAWYER: It is six, your Honor. I believe a statement should be made that when the witness was shown 42 originally he was shown photographic copies. Now we also have originals. The originals seem to be out of order. We are having difficulty reconciling them, so at this time we are going to offer the originals. That would cure any problem.

THE COURT: But you are offering six originals?

MR. LAWYER: That is correct.

THE COURT: Then Exhibit 42 as received consists of six originals of statements of the bank to the defendant?

MR. LAWYER: That is correct.

THE COURT: Now, are the six originals which are offered from the records of the bank?

MR. LAWEYR: Yes, sir, statements, the ledger cards.

THE COURT: These are original ledger copies of the statements to the customer, Mr. Zeiss; is that right?

THE WITNESS: That is right.

THE COURT: They are carbon copies, I take it?

THE WITNESS: That is right, sir.

THE COURT: When you send the customer's statement a carbon copy is kept in the files of the bank?

THE WITNESS: Yes.

THE COURT: And these are the retained carbon copies of the bank?

THE WITNESS: Yes.

THE COURT: We understand.

MR. APPLEMAN: I would like to make a motion to strike all the evidence pertaining to the statements from January to June which are not being submitted into evidence.

THE COURT: There hasn't been anything about January to June and there is nothing about January to June in evidence.

MR. APPLEMAN: I believe deposits were mentioned.

THE COURT: 41A are six credits to the account.

MR. APPLEMAN: If I am correct, your Honor, he read off the list of deposits when 42 was introduced into evidence from photocopies.

THE COURT: No, it was never introduced. It was only marked for identification and therefore never went into evidence.

MR. APPLEMAN: But he read into evidence the deposits for the period January to June which are not being offered into evidence at this time.

MR. LAWYER: It is not in evidence and never went in.

MR. APPLEMAN: Except that the testimony went in with the understanding that the --

THE COURT: I cannot remember whether he testified about that. Normally he wouldn't read from a document which wasn't in evidence.

MR. LAWYER: Your Honor, let's stipulate whatever may have happened, whether it is what Mr. Appleman remembers or the Court or me, that if he did in fact read from the document it is not in evidence and is stricken.

THE COURT: All right.

MR. LAWYER: Is that satisfactory, Mr. Appleman?

MR. APPLEMAN: And the jury will disregard it.

THE COURT: Yes, unless it is later on offered and received.

MR. APPLEMAN: Thank you.

THE COURT: Yes.

Q Mr. Zeiss, I ask you now to read the date and the total sum of money reflected on the various deposit tickets which comprise Government Exhibit 42A in Evidence.

A January 15, 1969, $1,385.; January 15, 1969, $625.; January 22, 1969, $5,000.; January 22, 1969, $315.; January 22, 1969, $300.; January 29, 1969, $1,464.15; February 19, 1969, $3,000.; February 26, 1969, $635.; March 5, 1969, $2,111.; March 19, 1969, $2,207.16; April 2, 1969, $1,170.; April 15, 1969, $2,135.; April 13, 1969, $2,125.50; May 7, 1969, $1,487.85; May 14, 1969, $1,761.56; May 22, 1969, $27,195.; June 11, 1969, $1,065.20; June 18,1969, $806.; July 30, 1969, $3,626.; August 6, 1970, $200.; August 7, 1970, $400.; August 20, 1969, $36,275.; October 2, 1969, $44,404.24; and September 24, 1969 -- I'm sorry. I think this is part of the same deposit, two deposits making up the one total.

Q Are you saying that you have two documents which refer to one amount?

A One transaction.

Q How much is the transaction?

A $44,404.24.

Q For what date?

A September 24, 1969.

Q When you are reading a date, sir, are you reading the bank's machine stamp date?

A Right, up to here, except this has one that was October 2, 1969. There is no bank stamp on the very last one.

Q But it is connected with the preceding one?

A It is connected with the preceding one, right.

Q Sir, I have placed before you Government Exhibit 43 for Identification. Do you know what Government Exhibit 43 is?

A These are checks.

Q Are the various documents which make-up Government Exhibit 43 copies of business records of Barclays Bank of New York?

A They are, yes.

Q Are they microfilmed copies?

A Microfilmed copies.

Q Were the microfilmed copies of those checks, sir, made in the regular course of the business of Barclays Bank?

A Yes, sir.

Q Is it part of the regular course of the business of Barclays Bank to make such microfilmed copies?

A Yes.

Q Did you personally compare those identical copies before you now with the microfilm at the bank?

A Yes, I did.

MR. LAWYER: Your Honor, we offer 43.

THE COURT: All right.

These are checks drawn on the same checking account?

THE WITNESS: These are checks payable to Dr.Wolf drawn on other banks, your Honor.

THE COURT: Drawn on other banks?

THE WITNESS: Right.

B17 THE COURT: These are checks that were deposited in Barclays Bank?

THE WITNESS: That is right, yes.

THE COURT: In this checking account?

THE WITNESS: Yes.

THE COURT: So these checks would relate to the deposits on the various dates and in the various amounts which you read off?

THE WITNESS: Yes, sir.

THE COURT: All right, show them to Mr. Appleman.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark them.

xx [Government Exhibit 43 received in Evidence]

Q Mr. Zeiss, sir, you have before you Government Exhibit 44 for Identification. Would you look at that, sir, and tell us whether or not you recognize it?

A Yes, I do.

Q What are the various documents that make-up Government Exhibit 44, sir?

A These are also copies obtained from microfilm of checks deposited to Dr. Robert Wolf's account.

Q I ask you to look at Government Exhibit 45 for Identification which is before you. Do you recognize Government Exhibit 45, sir, the various documents which make-up that exhibit?

A Yes, I do.

Q What are they?

A These are also copies of microfilms of checks deposited to Dr. Wolf's account.

Q I ask you to look at Government Exhibit 46 for Identification which is before you. Do you know what that is, sir, that is, the various documents which make-up that exhibit?

A These are also copies of microfilm of checks deposited to Dr. Wolf's account.

Q I ask you to look at Government Exhibit No.47 for Identification which is before you. Do you recognize the several documents which make-up that exhibit, sir?

A Yes, I do. These are also copies of microfilm of checks deposited to Dr. Wolf's account.

Q Did you personally before coming to testify look at all of the documents which comprise Government Exhibit 44, 45, 46 and 47?

A Yes, I did.

Q Did you compare each of the several documents which make-up those exhibits with the microfilm of Barclays Bank?

A Yes, I did.

Q Were all of the various documents which make-up Government Exhibits 44, 45, 46 and 47 for Identification microfilmed in the regular course of the business of Barclays Bank?

A Yes, they were.

Q Is it part of the normal course of the business of Barclays Bank to make such microfilms of checks, sir?

A Yes, it is.

MR. LAWYER: I offer Government Exhibits 44, 45, 46 and 47.

THE COURT: All right, show them to counsel.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

xx [Government Exhibits 44, 45, 46 and 47 received in Evidence]

[Mr. Fruchtman left the courtroom at 12:20]

Q Mr. Zeiss, I have placed back before you Government Exhibit 43 in Evidence. When you went to your microfilm to determine whether or not the Government exhibit reflects what is one your original microfilm, sir, did you have deposit tickets with you?

A Yes.

Q What dates were the documents which make-up Government Exhibit 43 deposited?

A May 14, 1969.

Q How many separate checks are there in Government Exhibit 43, sir?

A Eleven.

Q I show you Government Exhibit No.44 in Evidence, sir. When you compared the documents which make-up Government Exhibit 44 in Evidence with your original microfilm did you have a copy of the deposit tickets?

A Yes, I did.

Q On what date was the deposit made, sir?

A June 11, 1969.

Q How many separate checks are included in that Exhibit No.44?

A Fourteen.

Q I show you Government Exhibit 45 in Evidence. When you compared the documents which make-up Government

Exhibit 45 with your original microfilm did you have the original deposit ticket pertaining to those dates?

A Yes.

Q What date was the deposit?

A June 18, 1969.

Q How many separate checks is the exhibit comprised of?

A Eight.

Q I show you Government Exhibit 46 in Evidence. When you compared those documents with your original microfilm did you have a deposit ticket?

A Yes.

Q On what date was the deposit made?

A July 30, 1969.

Q How many separate checks are included in Government Exhibit 46 in Evidence?

A 16

Q I show you Government Exhibit 47 in Evidence, sir. When you compared the documents which constitute Government Exhibit 47 with your original microfilm did you have the deposit ticket before you?

A Yes.

Q On what date was the deposit made?

A October 2, 1969.

A How many separate documents is Government Exhibit 46 comprised of?

A Thirty-six.

Q Do all of the separate checks which you have just reviewed, sir, in Government Exhibits 43 thru 47 inclusive in Evidence pertain to the checking account of Dr. Robert Lawrence Wolf reflected on the signature card which is Government Exhibit 40 in Evidence?

A Yes, made payable to Dr. Wolf and were deposited thru his account.

Q I show you Government Exhibit No.48 for Identification, sir. Can you identify it?

A Yes, I can.

Q Is Government Exhibit 48 a business record of the Barclays Bank?

A Yes, it is.

Q Was Government Exhibit 48 made in the regular course of the business of Barclays Bank?

A Yes, it was.

Q Is it part of the regular course of the business of Barclays Bank to retain such records once they are made, sir?

A Yes, it is.

Q What is the date reflected on Government Exhibit 48?

A It covers a period from December 31, 1969 to January 30, 1970.

Q Just what is Government Exhibit 48?

A It is the bank ledger copy of the customers statement of account.

Q What customer does it refer to?

A Dr. Robert Wolf.

MR. LAWYER: We offer Government Exhibit 48.

MR. APPLEMAN: Your Honor, I don't believe the year 1970 is in issue so I will object.

MR. LAWYER: I ask that it be taken subject to connection, your Honor. I will make an offer of proof if necessary.

THE COURT: No, Mr. Appleman, I will take it subject to a motion to strike on your part. If it is not connected and if you don't believe it is connected you can make such a motion and at that time I will determine whether it has been or not.

MR. APPLEMAN: Thank you, your Honor.

THE COURT: All right.

MR. LAWYER: In that case may we submit the photographic copy?

May the record reflect that Mr. Appleman saw the original document and he has agreed to the submission of the photographic copy thereof.

THE COURT: What is the correct description of the document?

MR. LAWYER: Ledger card for Dr. Wolf's account.

THE COURT: This is a similar carbon copy, Mr. Zeiss, of a statement sent to Dr. Wolf; is that right?

THE WITNESS: Yes, it is, your Honor.

Q For what period?

A December 31, 1969 to January 30, 1970.

THE COURT: All right.

xx [Government Exhibit 48 received in Evidence]

B18 Q Mr. Zeiss, I have placed before you, sir, Government Exhibit 48A. Can you identify Government Exhibit 48A for Identification?

A Yes, I can.

Q What is it?

A These are four deposits to Dr. Robert L. Wolf's checking account at Barclays Bank.

Q What is the date, sir?

A January 7, 1970; January 7, 1970.

Q Just the date of the -- I'm sorry. Continue, sir.

A January 7 -- I'm sorry. The one before was -- The date of the actual document is January 7, 1969, January 7, 1969, January 7, 1969 and January 7, 1969.

Q What date does the bank stamp, that is the machine stamp reflect, sir?

A In each case, January 7, 1970.

Q So the handwritten date has a different year but the same month and day of the week; is that correct?

A That is right.

Q Are these four documents which make-up Government Exhibit 48A business records of the Barclays Bank?

A Yes.

Q Was such documents received and retained in the regular course of the business of Barclays Bank, sir?

A Yes, they are.

Q Is it part of the business of the bank to make and retain such records?

A Yes, it is.

MR. LAWYER: Your Honor, we offer these documents.

THE COURT: May I see them?

Allrright, show it to counsel.

MR. APPLEMAN: No objection, but due to the fact that there was a 1970 year, subject to connection, your Honor.

THE COURT: All right.

MR. LAWYER: May the record reflect, your Honor, that defense counsel has agreed to admit the photographic copies of the documents which comprise 48A. He has seen the originals.

THE COURT: All right, mark them.

xx [Government Exhibit 48A received in Evidence]

THE COURT: They are also taken subject to a motion to strike.

MR. LAWYER: Yes, sir.

Q Mr. Zeiss, would you read, sir, the amounts reflected on the four documents which are included in Government Exhibit 48A?

A $1,764.21; $2,602.60; $9,881.62; and $1,545.

Q Mr. Zeiss, what date does the bank in the normal course of business go by, the date which the customer puts on the deposit slip or the machine stamp date that the bank puts on?

A The machine stamp date.

Q And the machine stamp date you said was January 7, 1970?

A Yes.

Q And the handwritten customer date was January 7, 1969?

A Right.

Q You have before you, sir, Government Exhibit 48B for Identification. Do you recognize the various documents which make-up 48B for identification?

A Yes, I do.

Q What are they?

A These are copies taken from microfilm of checks payable to Dr. Wolf for deposit to his account.

Q Is that the same account to which Government Exhibit 40, that is the signature card, refers to?

A Yes, it is.

Q Were the various copies of checks which are included in Government Exhibit 48B microfilmed in the regular course of the business of Barclays Bank?

A Yes.

Q Is it part of the regular business of Barclays Bank to microfilm such checks?

A Yes, it is.

Q Were those copies, sir, retained in the normal course of the business of the bank?

A Yes.

Q Would you count the physical number of checks included in 48B for identification?

A 67

MR. LAWYER: Your Honor, we offer Government Exhibit 48B.

MR. APPLEMAN: Your Honor, we have two checks with regard to 48B which are dated in January of 1970.

THE COURT: All right, the same ruling. The exhibit will be received in evidence but subject to a later motion to strike as to the 1970 checks.

xx [Government Exhibit 48B received in Evidence]

Q Does Barclays Bank have any procedure for transferring funds for their customers to foreign countries, sir, in Europe?

A Yes, they do.

Q How about to Switzerland?

A Yes.

Q What is the usual, habitual practice that the bank would go thru if such a transfer were to be made; how does it all happen?

A Well, in the first place the three different ways in which transfers are made overseas are by cable, transfer by air mail, transfer by bank draft. In each case the client would make application on an application document, pay for the transfer in cleared funds here, and then we would deal thru one of our correspondents in the foreign country, if Barclays Bank is not represented in that particular area. In Switzerland we have five or six different correspondents with whom we do business.

Q Do you charge the customer for this?

A Yes, there is a charge.

Q What is it, approximately?

A It is approximately 1/8%, if I'm not mistaken.

THE COURT: 1/8 of 1%?

THE WITNESS: An eighth of a percent.

Q I show you Government Exhibit 49 for Identification, sir. Would you take a moment and look at the various documents included in 49 for identification and tell us whether or not you recognize them?

A Yes, I do recognize them.

Q Are there three different types of documents each pertaining to a transaction, sir?

A Yes, there is.

Q Tell us what is this first document that says "Debit Memo"?

A This is the actual voucher which is used to debit the customer's account for the particular transaction.

Q Does that refer to transferring money out of the country?

A In this particular case, yes.

Q What, generically speaking, is the second document before you which says "Mail Transfer Schedule"?

A This is the bank copy of the actual air mail transfer or air mail letter which we send to our correspondent, in this case the Union Bank of Switzerland, asking them to pay the funds.

Q Try and speak up so that the jury in the back here can hear what you are saying.

What do you call the third document?

A The third document is the application for the air mail transfer.

Q Who makes that out?

A The customer makes this document out.

Q Is this the only way in which you will accept applications for transfers?

A No, we would accept any instructions from the customer in writing with his signature.

Q I show you Government Exhibit 49A for Identification. Would you look at the several documents which make-up 49A and tell us whether you can identify them, sir?

A Yes, I can.

Q What are they?

A These are seven letters written by Robert Wolf to Barclays Bank, 300 Park Avenue.

Q That is sufficient.

MR. LAWYER: First of all, we offer Exhibit 49A.

THE COURT: All right. Has counsel seen it?

MR. APPLEMAN: No objection with regard to 49A.

THE COURT: All right.

xx [Government Exhibit 49A received in Evidence]

B19 Q I ask you to read, sir, the first of the seven documents which constitute Government Exhibit 49A including the date.

A It is a letter from Robert L. Wolf, M.D., Snug Harbor, Candlewood Lake, Danbury, Connecticut which has been deleted and replaced by 20 East 74th Street, New York, New York 10021; January 6, 1969, addressed to Barclays Bank DCO, 300 Park Avenue, New York, New York: "Re: Account No.051-74356-6.

"Dear Sir, Kindly transfer $45,250." -- In words and figures -- "from the above account number to Union Bank of Switzerland, Bahnhofstrasse 45, 8001, Zurich, Switzerland, account No." -- I can't make it out.

Q Read the separate letters. Does that appear to be "CQUE."?

A Right. Thank you.

"792507 RICH.

"Very truly yours, Robert Wolf," and signed by Robert Wolf.

THE COURT: Mr. Lawyer, we will have to stop now for lunch.

Mr. Foreman, ladies and gentlemen of the jury, you may retire and be excused for lunch until 2:00 o'clock. Thank you.

Mr. Zeiss, I am afraid we will have to ask you to come back at 2:00 o'clock.

THE WITNESS: Thank you.

[The jury left the courtroom]

THE COURT: Mr. Lawyer, will you tell me at this point what the connection is of the 1970 transaction?

MR. LAWYER: The 1970 transaction -- On January 7, 1970 checks received by the defendant in 1969 were deposited later.

THE COURT: And if received in 1969 your theory is that it is 1969 income?

MR. LAWYER: That it is taxable income.

I will point out to the Court now, and this is thru inadvertence and, quite frankly, I am surprised, but one of the later cards is for August, 1970. I am hoping that it is the only mistake we have made, but I will determine that and we will get together and clean up the record.

THE COURT: That is right. So if it is August 1970 presumably you wouldn't think that that is relevant?

MR. LAWYER: As for that particular card.

THE COURT: But the theory is that on the one for January 7, 1970 it was income in 1969 because the checks in evidence show that?

MR. LAWYER: That is correct.

MR. APPLEMAN: There are two checks which were dated 1970 which he has included in income on those deposit tickets. There were two checks submitted in one of the exhibits which pertain to this January 7, 1970 deposit which checks themselves were dated in 1970.

THE COURT: We may be able to eliminate them, but at least we know the principle on which the Government is proceeding.

MR. LAWYER: We are only talking about a couple of numbers. The great bulk of that was 1969.

THE COURT: I assume that there is no significance in the handwritten dates January 1969. It is the turn of the year and people don't adjust to it too quickly.

MR. LAWYER: That is why I alluded to the machine stamp, your Honor.

THE COURT: I want to be sure we don't attach any significance to that.

MR. LAWYER: That is correct.

[Recess taken until 2:00 p.m.]

AFTERNOON SESSION

2:00 p.m.

B20 THE COURT: All right, Mr. Clerk, would you get the jury, please.

[Jury present]

ANTHONY JOHN ZEISS, resumed:

DIRECT EXAMINATION [CONTINUED]

BY MR. LAWYER:

THE CLERK: You are still under oath, Mr. Zeiss.

Q Mr. Zeiss, prior to the luncheon recess you were reading or you completed reading the first document that is a letter which is part of Government Exhibit 49A. Does that letter bear a signature?

A Yes, it does.

Q Does that signature appear to be Robert Wolf's?

A Yes, it does.

Q Now, sir, without reading the text of the letter as such would you look thru each of the seven documents and tell us if the letters appear to be from Robert L. Wolf?

A Yes, it is.

Q Are they all signed, sir?

A Yes.

Q With the signature saying Robert Wolf?

A That is right.

Q Would you read the dates of each of the letters now beginning with the very first one?

A January 6, 1969, January 22, 1969, February 20, 1969, April 15, 1969, May 22, 1969, August 20, 1969 and October 2, 1969.

Q Would you just, without answering for each one individually, look at the deposit number to which reference is made and tell us whether or not all seven letters make reference to the same account number, that is, Barclays' account number?

A Yes, they do.

Q Tell us, without answering as to each one individually, whether each of the seven documents refer to the same Swiss bank account number?

A Yes, they do.

Q Now, sir, you have already read the first of the seven documents. Would you just read the text, without reading the address or the signature or the date, of each of the remaining letters?

THE COURT: Mr. Lawyer, isn't that a rather awkward way of doing it? Since they are in evidence, you can read them to the jury and you can argue. He isn't going to add a thing to it. You can argue to the jury in summation. Do we need to read them all now?

MR. LAWYER: Is it permissible if I just read the amounts? Then I won't read the text.

THE COURT: Do you have any objection, Mr. Appleman?

MR. APPLEMAN: No, your Honor.

THE COURT: All right.

MR. LAWYER: January 2, 1969, $7,500.; February 20, 1969, $5,000.; April 15, 1969, $6,000.; May 22, 1969, $30,000.; August 20, 1969, $41,000.; October 2, 1969, $44,400.; and prior to the recess the first letter was read, January 6, 1969, $45,250.

Q Mr. Zeiss, prior to coming to court here did ou personally review each one of these documents included in Government Exhibit 49 and Government Exhibit 49A?

A Yes, I did.

Q Did you supply all of the various documents personally to the Government?

A Yes, I did.

Q Did the letters, sir, which are included in Government Exhibit 49A refer to the documents included in Government Exhibit 49?

A Yes, they do.

MR. LAWYER: Your Honor, I offer Government

Exhibit 49.

THE COURT: All right, show it to Mr. Appleman.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

xx [Government Exhibit 49 received in Evidence]

MR. LAWYER: No more questions of this witness, your Honor.

THE COURT: All right.

MR. APPLEMAN: At this time I would like to make a motion to strike with regard to the 1970 checks.

THE COURT: I will reserve decision on that motion.

MR. APPLEMAN: No questions, your Honor.

THE COURT: All right, you may be excused, Mr.Zeiss. Thank you.

[Witness excused]

MR. LAWYER: Mr. Peter Burke.

PETER BURKE, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Are you employed, Mr. Burke?

A Yes.

Q By whom?

A Chemical Bank.

Q What particular address to you work at?

A 20 Pine Street.

Q Is that the main headquarters of the Chemical Bank?

A Yes, it is.

Q What is your job there?

A I am a clerk in the legal department.

Q What do you do, sir, in that capacity?

A We handle any legal papers that come in for processing and miscellaneous things.

Q What is the proper name of the Chemical Bank? Is it just plain Chemical?

A That is right.

Q Was it named in earlier years the Chemical Corn Exchange Bank?

A Yes.

Q Was it also named Chemical Bank-New York Trust Company?

A It was.

Q Has it had any other names since 1965?

A No.

Q How long have you been employed by the bank?

A Eighteen years.

Q How long in your present position, sir?

A Since 1965.

Q In the regular, normal course of your business at Chemical Bank have you become familiar with the various types of files and records which are made and maintained by Chemical Bank pertaining to checking accounts and to savings accounts?

A Yes, I have.

Q I show you Government Exhibit 20 for Identification. Do you know what that is, sir?

A Yes, I do.

Q What is it?

A It is a signature card for a checking account in the name of Dr. Robert Lawrence Wolf.

Q What is the date of the card?

A May 28, 1959.

Q Government Exhibit 20 is a business record of the Chemical Bank; is that right?

AQ Yes, it is.

Q A photographic copy of such a record?

A It is.

Q Was it made in the regular course of the business of the bank?

A Yes.

Q Is it part of the regular course of the business to make such records?

A Yes, it is.

MR. LAWYER: We offer Government Exhibit 20. May the record reflect that defense counsel has the original. Can we stipulate and substitute a copy?

MR. APPLEMAN: Yes.

THE COURT: All right, mark it.

xx [Government Exhibit 20 received in Evidence]

Q Mr. Burke, what is the account number for that particular account?

A 010250271.

Q Is that a joint account or an individual account?

A Individual account.

Q Checking or savings?

A Checking.

Q Mr. Burke, I ask you to look at Government Exhibit 21 for Identification which I have just placed before you. Do you recognize it?

A Yes.

Q What is it?

A It is a copy of a bank statement in the name -- for a checking account in the name of Dr. Robert Lawrence Wolf.

Q Does that account number thereon refer to the same account as was on Government Exhibit 20 in Evidence?

A Yes, it does.

Q Tell us how many separate physical pieces of paper are included in the exhibit which you refer to as account cards?

A Thirteen copies.

Q I ask you to look at Government Exhibit 21A which has been placed before you. Do you recognize what the documents included in that exhibit are?

A They are copies of bank statements.

Q Referring to what account, sir?

A To the account of Dr. Robert Lawrence Wolf.

Q Does it refer to the same account as does the preceding exhibit?

A Yes, it does.

Q Would you tell us how many separate sheets, sir, are included in that exhibit, 21A for identification?

A 16 copies.

B21

Q I ask you to look at Government Exhibit 21B which has been placed before you. Do you recognize the documents which make-up Government Exhibit 21B for Identification?

A Yes.

Q What are they?

A They are bank statements, copies of bank statements for a checking account in the name of Dr. Robert Lawrence Wolf.

Q Would you tell us how many separate sheets of paper are included in 21B for identification?

A 16 copies.

Q I ask you to look at Government Exhibit 21C for Identification which has been placed before you. Do you recognize what the separate sheets of paper which make-up that exhibit are, sir?

A Yes.

Q What are they?

A Copies of bank statements for the checking account of Dr. Robert Lawrence Wolf.

Q Do Government Exhibits 21, 21A, 21B, 21C all refer to the same account?

A Yes, they do.

Q All of those, sir, are microfilmed copies of bank records; is that correct?

A Yes, they are.

Q Is it in the normal course of the business of Chemical Bank to so copy the records of that type, sir?

A Yes.

Q Were those copies taken from microfilms which were kept in the regular course of business?

A I don't think these were made from microfilm. They were made from the actual original records by copying machine.

Q Where are the original records of such cards now, sir?

A You have them.

Q You gave them to me?

A Yes.

THE COURT: Mr. Burke, can you tell us what is the difference between 21, 21A, 21B and 21C? Is it the same type of statement but just for different periods?

THE WITNESS: Yes, they are all the same -- they are all copies of bank statements for this checking account.

THE COURT: But they are each for a different time period?

THE WITNESS: Yes.

THE COURT: And are they carbon copies of the statements sent to the depositor?

THE WITNESS: Yes, they are. These are copies made from duplicate copies that the bank has in their possession.

THE COURT: So presumably these were made at the same time as the document, the statement sent to the depositor?

THE WITNESS: Well, actually the way you would explain it is that the original goes to the depositor. The bank has a copy of it and these copies were made from the bank's copies.

THE COURT: Are these process copies?

THE WITNESS: Which I have here?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: They are made on a Xerox or Apeco or something of that sort?

THE WITNESS: That is right.

THE COURT: And the retained carbon copy of the bank is what you would call the original?

THE WITNESS: Right.

THE COURT: And those are the documents that you say the Government has?

THE WITNESS: That is right.

THE COURT: And these are process copies made from them?

THE WITNESS: That is correct.

THE COURT: All right.

MR. LAWYER: Let the record reflect that I have turned over to defense counsel copies of all original documents obtained from Chemical Bank which arrived yesterday.

THE COURT: Yes.

MR. LAWYER: I offer Exhibits 21, 21A, 21B, 21C.

THE COURT: All right, I think Mr. Appleman should see the actual exhibits that are being offered also.

MR. APPLEMAN: It would appear that the originals pertaining to this account for the period February 10, 1966 to November 1966 are not among the papers given to me, the originals, your Honor.

Q Mr.Burke, what is the retention period for what you call the original ledger sheets?

A Six years.

MR. LAWYER: Your Honor, we will offer them again.

THE COURT: Mr. Burke, do you know whether in the case of the time period to which Mr. Appleman, the counsel for the defendant, has just referred, do you know if the process copies were made sometime ago before your retained carbon copies were destroyed?

THE WITNESS: Yes.

THE COURT: And they were made, I assume, sometime ago because the Government asked you to do it?

THE WITNESS: Yes.

THE COURT: And thereafter the banks' normal policy of destruction operated and that is why they are not here?

THE WITNESS: That is correct.

THE COURT: All right.

MR. LAWYER: I renew the offer on 21, 21A, 21B and 21C.

THE COURT: Have you had a chance to look at all of them?

MR. APPLEMAN: I have looked at 21A, 21B and 21C, to which I have no objection. However, as to 21, there are no originals here.

THE COURT: All right. On the basis of the witness's testimony I will overrule the objection and admit them. Mark them, Mr. Clerk.

xx [Government's Exhibits 21, 21A, 21B and 21C received in Evidence]

Q Would you tell us just what is the time period to which Government Exhibit 21 in Evidence refers, from what to what?

I withdraw that.

Would you just tell us the years to which the various documents in Government Exhibit 21 in Evidence refer, sir? Just look thru each one and tell us what year.

A 1966.

Q To what year do the various documents included in Government Exhibit 21A refer, sir?

A 1967.

Q To what year do the various documents included in Government Exhibit 21B refer?

A 1968.

[Mr. Fruchtman entered the courtroom at 2:25 p.m.]

THE COURT: What about 21C?

MR. LAWYER: I'm sorry. For the record, Government Exhibit 21C refers to the 1969 year.

Q Mr. Burke, I just put several folders before you, sir. Would you take the first one and look at it? Does it have the number Government Exhibit 24, sir?

A It does.

Q I ask you to look at the various documents in Government Exhibit 24 and tell us whether or not you recognize them?

A Yes, they are copies of deposit tickets to the checking account of Dr. Robert Lawrence Wolf.

Q Is that the same checking account about which you have already testified?

A Yes, sir.

Q What year do those documents refer to, sir?

A I'd say the majority of them are 1966, but there is a couple in here for 1967.

Q Would you look at the folder marked Government Exhibit 25, sir? Please look at the documents included in Government Exhibit 25 for Identification and tell us what they are.

A They are copies of deposit tickets to the checking account of Dr. Robert Wolf for 1967.

Q Please look at the folder marked Government Exhibit 26. Can you look at those and tell us whether you can identify them, sir?

A They are copies of deposit tickets to the account, the checking account of Dr. Robert Lawrence Wolf for the year 1968.

Q Please look at the folder marked Government Exhibit 27. Will you look at the individual documents and tell us whether or not you can identify them?

A These are copies of deposit tickets to the account of Dr. Robert Lawrence Wolf for the year 1969.

Q Do Government Exhibits 24, 25, 26 and 27 for Identification all refer to the same checking account, sir?

A Yes, they do.

Q Carrying the same checking account number?

A Yes.

Q Where are the originals of those, sir?

A You have them.

Q Did you give them to me in response to a subpoena?

A I did.

Q Did you deliver them yesterday, sir?

A Yes.

B22 Q Are the originals such documents business records, sir, of the Chemical Bank?

A Yes.

Q And were they made in the regular course of Chemical Bank's business?

A Yes, they were.

Q Is it part of the business of the Chemical Bank to make and maintain such records as Government Exhibits 24, 25, 26 and 27 for Identification?

A Yes.

MR. LAWYER: Your Honor, we offer those four exhibits, 24, 25, 26 and 27.

THE COURT: Show them to counsel.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark them.

xx [Government's Exhibits 24, 25, 26 and 27 received in Evidence]

Q I have placed before you Government Exhibit 28 for Identification. Please look at that, Mr. Burke, and tell us whether you can identify it?

A Yes.

Q What is it?

A It is a copy of a check dated November 25, 1966 drawn by Dr. Robert Lawrence Wolf on Chemical Bank.

Q Is Government Exhibit 28 for Identification a microfilm copy, sir?

A Yes, it is.

Q Was that microfilm copy made in the regular course of the business of Chemical Bank?

A Yes.

Q Was it part of the regular course of the business of Chemical Bank to make such microfilm copies?

A Yes, it is.

MR. LAWYER: Your Honor, I offer them.

THE COURT: All right. I take it that certain of the records of the bank are put on microfilm?

THE WITNESS: Checks are.

THE COURT: Checks are put on microfilm and then if you have occasion to refer to one of those checks you get out the microfilm and you make such a copy as you just identified?

THE WITNESS: Right.

THE COURT: Which is actually an enlargement? In addition to being a copy it is an enlarged copy, isn't it?

MR. LAWYER: Smaller.

THE WITNESS: I think it is smaller, or it might even be the same size.

THE COURT: Is it the same size as the microfilm original?

THE WITNESS: I would say so. It might be a little smaller.

THE COURT: Any objection?

MR. APPLEMAN: No objection.

THE COURT: Mark it.

xx [Government Exhibit 28 received in Evidence]

MR. LAWYER: May I read the information on Government Exhibit 28, your Honor?

THE COURT: You may.

[Mr. Lawyer read from Government Exhibit 28]

Q Mr. Burke, I have placed before you Government Exhibit 30 for Identification. Do you recognize that, sir?

A Yes.

Q What is it?

A It is a copy of a signature card for a savings account in the name of Dr. Robert L. Wolf, account No.10-3418.

Q Is the original of that document a business record of the Chemical Bank?

A Yes.

Q Was it made in the regular course of the bank's business?

Q Is it part of the regular couse of the bank's business to make such original records, sir?

A Yes.

MR. LAWYER: Your Honor, we offer that.

THE COURT: This is 29, right?

MR. LAWYER: This is 30.

THE COURT: All right.

Has Mr. Appleman seen it?

MR. APPLEMAN: Has the original been produced?

MR. LAWYER: It has.

MR. APPLEMAN: I don't have the original, your Honor.

Q Mr. Burke, did you receive a subpoena, sir, on behalf of the bank for the original document?

A Yes.

Q When did you receive that subpoena, approximately?

A Last Friday.

Q Was a search made for the original document?

A Yes, it was.

Q And insofar as you know, sir, did you comply with everything you could find on the original subpoena?

A Yes, sir.

Q So if the original record is not included in the documents you gave me -- Were you unable to find it?

A Yes.

MR. LAWYER: We offer Government Exhibit 30 in its photographic form.

THE COURT: I assume that this photograph was made sometime ago at the request of the Government?

THE WITNESS: Yes.

THE COURT: All right.

MR. APPLEMAN: Your Honor, I wish to draw the Court's attention to the fact that we have a date here of March 17, 1965, "Transferred to dormant ledger." The account itself is still operative during the period up to 1968. I have it here, your Honor, so it would appear that there should be the original of the ledger card someplace within the bank's record.

THE COURT: Not the ledger card. We are talking about, as I understood, the signature card.

MR. APPLEMAN: I mean signature card.

THE COURT: Let me see it.

[Pause]

THE COURT: Mr. Burke, do you know, regarding this notation, "Transferred to dormant ledger," whether that has anything to do with whether or not the original is still available?

THE WITNESS: No.

THE COURT: What are these two papers?

MR. APPLEMAN: Those are the ledger cards of the bank indicating that the account was still active in 1967 and 1968 and therefore the original signature card should be available, your Honor.

THE COURT: But the witness and the only witness we have says that he got a subpoena, that he caused a search to be made, and that he gave the Government all the papers that he could find called for in the subpoena and according to Mr. Lawyer the original of this Exhibit 30 is not among them.

Will you return this to Mr. Appleman? The objectio is overruled. Mark Exhibit 30 in evidence.

xx [Government Exhibit 30 received in Evidence]

Q Referring to Government Exhibit 30 in Evidence, which date on here refers to the date that the account was opened?

A July 14, 1961.

Q Is the account number 10-3418?

A Yes.

Q Mr. Burke, I ask you to look at the first folder I have placed before you, sir, which is marked Government Exhibit 31 for Identification. Do you have that folder?

A Yes.

Q I ask you to look at the documents included in

Government Exhibit 31 for Identification. Will you tell us what those are, sir?

A It is a copy of a ledger card for a savings account numbered 10-3418 in the name of Dr. Robert L. Wolf covering the period September 30, 1965 thru September 9, 1969.

Q Does that refer to the same account as did Government Exhibit 30, the signature card?

A Yes.

Q Is that a joint account or individual account?

A It is an individual account.

Q Will you take the next folder before you, sir?

A Yes.

Q Is that marked Government Exhibit 32?

A Yes.

Q I ask you to look at the documents in Government Exhibit 32 for Identification and tell us whether you can identify those?

A These are copies of deposit tickets to the savings account numbered 10-3418 in the name of Robert Wolf for the year 1966.

Q Is the next folder before you Government Exhibit 33?

A Yes.

Q Please look at the documents included in Government Exhibit 33 for Identification and tell us what those are, if you know, sir?

A These are copies of deposits to a savings account in the name of Dr. Robert Lawrence Wolf, account No.10-3418 for the year 1967.

Q I ask you to look first, sir, at the folder before you marked Government Exhibit 34 and then at the folder before you marked Government Exhibit 35, both for Identification, and then tell us what they are, sir?

A Exhibit 34 isaa copy of two deposit tickets, one for $2,533. --

Q Don't read the amounts.

A Okay. Copies of two deposits made to the account of Dr. Robert L. Wolf, one in November and one in October 1968.

B23 Q And Government Exhibit 35 for Identification?

A A copy of six deposit tickets to the account of Dr. Robert L. Wolf for a savings account.

Q What year?

A 1969.

Q Do Government Exhibits 32, 33, 34 and 35 for Identification all pertain to the same savings account?

A Yes, they do.

Q Is that the savings account to which you referred with respect to Government Exhibit 30, the signature card?

A Yes.

Q Were the original documents, sir, which comprised those four exhibits, 32, 33, 34 and 35, business records of the Chemical Bank?

A Yes.

Q Were they made and retained in the normal course of business of Chemical Bank?

A Yes.

Q Is it part of the business of Chemical Bank normally to retain and make such records?

A Yes.

Q Sir, in response to a subpoena from the Government did you supply all the originals of those documents as you were able to locate?

A Yes.

Q Are those the documents that you handed over to me?

A Yes.

MR. LAWYER: We offer Governments Exhibits 32,33, 34 and 35 in evidence.

THE COURT: What became of 31? Are we going to deal with that later?

MR. LAWYER: I didn't offer it. I'm sorry.

THE COURT: What is 31?

MR. LAWYER: Ledger cards, sir.

THE WITNESS: Savings ledger.

MR. LAWYER: Your Honor, I'm sorry. I marked it for identification. I didn't offer it. I will also offer that.

THE COURT: These are the ledger cards of the bank showing deposits, withdrawals, interest and the balance?

THE WITNESS: Right.

THE COURT: All right, I see.

MR. LAWYER: I offer 31 thru 35, inclusive.

THE COURT: Are any of the originals of these available?

MR. LAWYER: Yes, sir, Mr. Appleman has them.

THE COURT: All right.

MR. APPLEMAN: For the record, with regard to Exhibit 31 we are missing the last sheet, the original of the last sheet with regard to the bank ledger card. We only have the sheets thru --

MR. LAWYER: The reverse side.

MR. APPLEMAN: -- thru October 1968. We are missing the sheet for November 1, 1968 thru September 9, 1968.

MR. LAWYER: You are stating that we are missing the originals?

MR. APPLEMAN: That is right.

MR. LAWYER: I will offer the photograhic copies.

THE COURT: If the originals aren't here, Mr.Burke, I take it you couldn't find the orignals?

THE WITNESS: That is right.

THE COURT: I will admit Exhibits 31 thru 35.

xx [Government Exhibits 31 thru 35 received in Evidence]

Q I show you Government Exhibit No.36 for Identification, sir.

MR. LAWYER: May the record reflect that I am showing a photographic copy and I will also show the original.

Q Can you identify Government Exhibit 36, sir?

A Yes, it is a withdrawal against the savings account of Dr. Robert Wolf.

Q What date?

A June 8, 1966 for $3,000.

Q Does that refer to the same savings account about which your other testimony pertains?

A Yes, it does.

Q Is the original document, sir, a business record of the bank?

A It is.

Q Was it made in the regular course of the business of the bank?

A Yes.

Q Is it part of the normal course of the bank's business to make and retain such records?

A Yes, it is.

MR. LAWYER: We offer 36, your Honor.

THE COURT: Any objection, Mr. Appleman?

MR. APPLEMAN: No objection.

THE COURT: Mark it.

xx [Government Exhibit 36 received in Evidence]

Q Finally, Mr. Burke, I show you Government Exhibit No.37 for Identification. Will you look at it, sir, and tell us whether you can identify the various documents which make-up Government Exhibit 37 for Identification?

A Yes. These are copies of money orders purchased by Dr. Robert Wolf and also copies --

Q Speak a little louder.

A They arecopies of money orders purchased by Robert Wolf --

THE COURT: Purchased from whom?

THE WITNESS: At the Chemical Bank Branch at 940 Madison Avenue.

THE COURT: I can go into the Chemical Bank and buy a money order; is that right?

THE WITNESS: Yes.

THE COURT: It is just like going to the post office in the old days?

THE WITNESS: That is right.

Q How many separate money orders are included in that Exhibit 37 for identification, sir?

A Six. Then there is also copies of three official checks issued by the Chemical Bank at 940 Madison Avenue.

Q What is an official check?

A It is a bank check.

Q How does a person go about getting an official check?

A He requests an official check from the bank.

Q What makes it official, sir?

A It says so.

THE COURT: What is the difference between an official check and a money order, Mr. Burke?

THE WITNESS: That is a good question.

THE COURT: Is it just the form of document?

THE WITNESS: I think an official check might hold -- Actually it is not the same thing, but an official check -- Somebody might ask for an official check rather than a money order thinking it is better.

Q Can anyone walk off the street and get a money order whether the individual has an account or not?

A Yes.

Q Can anyone walk off the street and get an official check whether you have an account or not?

A Yes.

Q Just tell us what year the money orders cover, sir.

A 1967.

Q How about the official checks?

A There is two for 1967 and one for 1968.

Q Altogether there are nine separate checks?

A Nine items, right.

Q Where are the originals, sir?

A You have them.

Q You produced those in response to a subpoena?

A Yes.

MR. LAWYER: Your Honor, we offer the copies.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

xx [Government Exhibit 37 received in Evidence]

THE COURT: May I take a look at them?

[Pause]

THE WITNESS: The official check is signed by a bank official and a money order is signed by the purchaser.

THE COURT: Yes, and to me that would make a lot of difference because in the one case presumably the money order would be good if the person who signs the money order has that much money, but there is nothing on the money order that I see that obligates the Chemical Bank, whereas the official check is issued over the credit of the Chemical Bank.

THE WITNESS: Of the bank, right.

THE COURT: In other words, the so-called money order is more like a check on a checking account. It is rather puzzling. I am not by any means a banking expert.

THE WITNESS: Money is given over to the bank for a money order.

Q Is that the necessary practice of the bank, sir, to require payment before it issues a money order to a purchaser?

A Of course.

Q Is that the invariable practice, sir, with the bank?

A Yes.

THE COURT: It may be that in financial circles a money order is accepted because it by custom has already been paid for and therefore the person who pays for it has confidence in that custom but technically the signature seems to be that in each case of Dr. Wolf on the money orders and on the official check it is the signature of the bank, and I would say that a person might rather have an official check, or at least the payee might.

Q Mr. Burke, are you able to look at the money orders included in Government Exhibit 37 in Evidence and tell one way or the other how they were paid for, that is, with cash or with check?

A No.

B24

Q Is there any practice on the part of the bank of which you are aware for requiring one or the other?

A As long as the bank receives money in payment of the money order. In other words, somebody may not have cash but they will have an account with the bank and ask for a money order and get it.

[Mr. Fruchtman entered the courtroom at 3:05 p.m.]

Q Will the bank necessarily check ahead of time to see if the account had such money?

A Of course.

Q How about with the official check, do you know whether or not the bank has a particular practice of the individual paying cash or the account debited?

A No.

Q Would the same things you said about the money order be true -- In other words, the person would either have to pay cash or his account would have to be debited?

A That is right.

MR. LAWYER: Your Honor, the following three money orders included in Government Exhibit 37 in Evidence are all dated September 29, 1967. They are for the following amounts: $171. payable to the order of Goodbody & Company; $1,000. payable to Goodbody & Company; and, third, $1,000. payable to Goodbody & Company.

No.4, there is a money order dated October 24, 1967 payable to the order of Goodbody & Company for $1,000. There is a money order dated October 27, 1967, again, payable to the order of Goodbody & Company. There is still another money order dated October 27, 1967 payable to Goodbody & Company for $229. There is an official check dated June 20, 1967 payable to the order of Goodbody & Company for the amount of $1,968.19. There is an official check dated August 4, 1967 payable to the order of Goodbody & Company for $2,195.88. There is an official check dated May 21, 1968 payable to the order of Goodbody & Company for $681.70.

I have no more questions, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mr. Burke, I understand that you are a clerk in the legal department of the Chemical Bank?

A Yes.

Q Would the bank keep a record of all legal activities pertaining to this account such as attachments, etc.?

A Yes.

Q Has this account ever been subjec to an attachment?

A Personally, I don't know.

Q Would it be difficult for you to find out?

A No, I don't think so.

Q Can you please determine whether this account at anytime during this period was ever subject to an attachment?

MR. LAWYER: I object. We are basically --

THE COURT: Sustained.

MR. APPLEMAN: Your Honor, I think this is necessary to show --

THE COURT: Suppose it was.

MR. APPLEMAN: It would show the fact that the defendant here was having marital problems.

THE COURT: That hasn't got a thing in the world to do with it.

MR. APPLEMAN: The mental state of mind, your Honor.

THE COURT: Of course not. All right, let's go on.

MR. APPLEMAN: No further questions.

THE COURT: Thank you, Mr. Burke.

MR. LAWYER: I think the witness wants to know if I am going to give him his originals back.

THE WITNESS: Yes.

THE COURT: Did we mark any of them in evidence?

MR. LAWYER: No, sir.

THE COURT: All right, he can be given them back.

[Witness excused]

MR. LAWYER: The Government calls Rose Fusco.

ROSE FUSCO, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation, m'am?

A I am a secretary.

Q Miss Fusco, would you keep your voice up so we can hear you back here.

A I am a secretary.

Q Do you know Robert L. Wolf?

A Yes, I do.

Q Do you see that person in court?

A Yes, I do.

Q Would you point to him?

A Yes [indicating].

MR. LAWYER: May the record reflect that the identification is made?

THE COURT: Yes.

Q Have you been a patient of Dr. Wolf?

A Yes, I have.

Q I have placed before you Government Exhibit 108 for Identification. Would you look at the various documents in Government Exhibit 108 and tell us whether you recognize them?

A Yes, I do recognize them.

Q What are they, m'am?

A They are checks I made payable to Dr. Wolf.

Q For medical services?

A For medical services.

Q Does your signature appear on each one?

A Yes, it does.

Q Would you just tell us how many separate checks are included on the exhibit, m'am?

A There are fourteen checks.

MR. LAWYER: Your Honor, I offer 108 into evidence, at which time I will read the dates.

THE COURT: All right.

MR. APPLEMAN: No objection.

THE COURT: Mark it.

xx [Government Exhibit 108 received in Evidence]

Q Did you make any other payment to Dr. Wolf, m'am, not included in the documents you just saw in Government Exhibit 108?

A There was one payment, one check, that was missing when I received my statement, one that was lost.

Q For how much, m'am?

A I believe it was for about $80.

Q Do you recall the date?

A It was in December of 1968.

MR. LAWYER: May that be marked 108A for identification.

xx [Government Exhibit 108A marked for Identification]

Q I show you Government Exhibit 108A for Identification, which simply refers to the small piece of paper to which the exhibit tag is attached. Is this the stub part of the check to which you just referred?

A Yes, it is.

MR. LAWYER: Your Honor, we offer 108A, simply the stub.

THE COURT: As I understand it, the check for which this is a stub was given by you to the Doctor and returned by your bank, but then you lost it, misplaced it?

THE WITNESS: No, it was not returned by the bank, your Honor. It was deducted from my bank balance. It was on my statement but the check was not included.

THE COURT: Misplaced by the bank?

THE WITNESS: Misplaced by the bank, yes.

THE COURT: All right, show it to Mr. Appleman.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

xx [Government Exhibit 108A received in Evidence]

MR. LAWYER: I have no more questions of this witness.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Is it Miss or Mrs. Fusco?

A Mrs. Fusco.

Q Mrs. Fusco, did the Doctor ever request payment for his services in cash?

A No, sir, he never did.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Anything else?

MR. LAWYER: No, sir.

THE COURT: Thank you, Miss Fusco, you may be excused.

[Witness excused]

MR. LAWYER: The Government calls Mrs. Eleanor Schneider.

ELEANOR SCHNEIDER, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Are you employed, Mrs. Schneider?

A No, I'm not.

Q Do you know a person by the name of Dr. Robert L. Wolf?

A Yes, I do.

Q Do you see that person in the courtroom?

A Yes.

Q Will you point him out?

A The gentleman sitting over there [indicating].

THE COURT: Identification made. All right.

Q Have you ever been a patient of the Doctor, m'am?

A Yes.

B25 Q I show you Government Exhibit No.118 for Identification. Would you look at the separate documents of which Government Exhibit 118 is made up and tell us what they are, m'am?

A They are checks that I paid Dr. Robert Wolf.

Q Would you repeat that a little louder.

A They are checks that I paid Dr. Robert Wolf.

Q Does your signature appear on each check?

A Yes.

Q How many such checks are there, m'am?

A 20

Q Are 19 of those checks for $25.?

A Yes, they are.

Q And one for $65.?

A Right.

MR. LAWYER: Your Honor, I will offer these. Then I will read the dates.

THE COURT: What is the number?

MR. LAWYER: 118

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark it.

xx [Government Exhibit 118 received in Evidence]

MR.LAWYER: May I ask permission to state that the record simply reflect that the 20 checks are made out to various dates in 1966, 1967, 1968 and 1969.

THE COURT: Yes.

MR. LAWYER: I have no further questions of this witness.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mrs. Schneider, did the Doctor ever request that you pay for services in cash?

A No.

Q Did the Doctor ever request that you do not claim these payments that you made to him as a deduction on your income tax return?

MR. LAWYER: Objection.

THE COURT: I will permit it.

A No.

MR. APPLEMAN: No further questions.

THE COURT: Anything else?

MR. LAWYER: No redirect.

THE COURT: Thank you, Mrs. Schneider you may be excused.

[Witness excused]

MR. LAWYER: Originally with regard to Exhibit 108 as to the witness, Mrs. Fusco, I said I would read the dates and I never did.

THE COURT: All right.

MR. LAWYER: May the record reflect the several checks are made out to various dates in 1966, 1967, 1968 and 1969.

THE COURT: Yes.

MR. LAWYER: 108A, which was the stub, was made out for December 1, 1968.

The Government calls Mrs. Sylvia Fox.

SYLVIA FOX, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation, Miss Fox?

A I am an employee of the City of New York, Department of Social Services.

Q How long have you been employed by them?

A Since 1933.

Q By whom were you employed before you had your present position?

A I have been with the Department for all my working life there.

Q Were you at the Reconciliation Section of the Bureau of Physical Administration?

A Yes, I was.

Q Is that also within the Department of Social Services?

A Correct.

Q What does the Division of Medical Payments do, m'am, just briefly?

A Payments are made to anybody who renders any kind of medical service to Medicaid clients.

Q You mean doctors; is that correct?

A Yes.

Q In what form doyou repay them, by check or cash?

A By check.

THE COURT: Is this part of the City of New York?

THE WITNESS: Correct.

Q I show you Government Exhibit 102 for Identification. Do you know what the two documents on Government Exhibit 102 are, m'am?

A Yes, I do.

Q What are they?

A They are checks issued to Dr. Robert Lawrence Wolf in payment of medical services rendered to Medicaid clients.

Q How do you know they are checks issued by your Department?

A They are drawn on the medical account of the Department of Welfare of the City of New York.

Q Did you produce those for the Government, m'am?

A Yes, we did.

MR. LAWYER: We offer 102.

THE COURT: There are two checks in 102?

MR. LAWYER: Yes, sir.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark it.

xx [Government Exhibit 102 received in Evidence]

MR. LAWYER: Your Honor, I ask permission to read the dates and the amount of the check. That is, I ask permission to let the witness do it. I am a little confused.

Q What date was the check made out for?

A 7/19/68.

Q What amount?

A $420.

Q Payable to Dr.Wolf?

A Payable to Dr. Robert Lawrence Wolf, 20 East 74th Street, New York, New York. The other check is dated 8/4/69 in the amount of $112. drawn the same as above.

MR. LAWYER: No further questions.

MR. APPLEMAN: I have no questions, your Honor.

THE COURT: Thank you, Miss Fox, you may be excused.

[Witness excused]

THE COURT: Mr. Lawyer, suppose we take a few minutes now.

Ladies and gentlemen, suppose we take an afternoon recess. You may be excused for a few minutes.

[The jury left the courtroom]

[Recess]

MR. LAWYER: I have advised defense counsel that the witness who was on yesterday, the accountant, Mr. Benjamin Edelstein, called me around a quarter of 2:00 during the luncheon break, your Honor, and requested that he be permitted to come down today. I advised him that I thought we could fit him in. He arrived about thirty minutes ago. He is in the witness room and I would like to put him on today.

I would point out that what he was requested to do was to go to his office to find certain documents which defense counsel requested.

MR. APPLEMAN: Your Honor, I submitted all the records I have concerning Mr. Edelstein to Joseph Gallo of Staten Island, New York. Mr. Gallo is a former Revenue agent. I asked him to analyze the differences between the work sheets and the returns and bring same back to me as soon as possible. He asked me if it could be done by tomorrow morning at 8:00 o'clock and I said that in view of the fact that Mr. Edelstein has been excused until 10:30 tomorrow morning that, yes, he can bring it back to me, so therefore if Mr. Edelstein does appear I have none of my records prepared to continue my cross-examination. Number two, some of my most important cross-examination will be missing because Mr. Gallo is preparing the work sheets for me.

THE COURT: I think, frankly, under those circumstances it really wouldn't be fair to have Mr. Edelstein now. In other words, defense counsel has made his plans on the understanding that Mr. Edelstein would appear tomorrow morning.

MR. LAWYER: Yes, sir.

THE COURT: And I can appreciate your wanting to accommodate the witness, but it was at his request that he put it over until tomorrow morning and I don't think that it would be right to have him now.

MR. LAWYER: It is my understanding that the only reason the witness wasn't completed yesterday was because he was asked to obtain several documents which defense counsel asked him to obtain.

THE COURT: I don't know whether that is so or not. You may be right. But if Mr. Appleman asked me to be allowed to question him further I think considering the fact that he was the defendant's accountant that I would be bound to allow it.

B26 I hate to disappoint Mr. Edelstein, but I don't think I want to do that. Can you or your colleague go out and talk to him and tell him that I am sorry but we have all setup our schedules on the assumption that he would be here tomorrow morning at 10:30 and that is the way we will have to do it.

MR. LAWYER: Yes, sir, at 10:30 tomorrow.

THE COURT: Do you have any objection if he starts at 9:30?

MR. LAWYER: No, your Honor, he is the one who requested 10:30.

THE COURT: I know he is the one who requested it, but ask him if he would now prefer 9:30. If so, I will be glad to do it. Do you want to go out and talk to him?

MR. LAWYER: My colleague will go out.

THE COURT: If he wants 9:30 we can deal with that after we excuse the jury this afternoon.

Are we ready for the jury?

MR. LAWYER: In view of that, I have five witnesses left. They are all brief witnesses. After that I won't have any more witnesses.

THE COURT: Whenever we finish with them, we will conclude. When we finish Mr. Edelstein tomorrow, how much more do we have?

MR. LAWYER: Only one more substantial documents witness. Then we will be through with most of the paperwork. Then we will have ten other witnesses, some of them brief.

I meant only five more for today, your Honor.

THE COURT: Is there some likelihood that we will finish tomorrow?

MR. LAWYER: I doubt it. We have to put on the special agent who will pull all of this together. That will take quite a long time. He will have to go thru the charts. We will have to have the Revenue agent who will testify as to computations.

THE COURT: Will we finish by Friday?

MR. LAWYER: I believe the Government will be able to rest by Friday, but that is very contingent upon the cross.

THE COURT: All right. Mr. Clerk, will you get the jury.

[Jury present at 3:45.]

MR. LAWYER: We will call Miss Fanny Rubel.

FANNY W. RUBEL, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation, madam?

A Secretary.

Q Do you know a Dr. Robert Wolf?

A Yes, I do.

Q Do you see that person in court?

A Yes.

Q Would you point him out?

A He is the last gentleman there [indicating].

THE COURT: All right.

Q Mrs. Rubel, kindly keep your voice up so we can hear you in the back.

A All right.

Q Had you been a patient of Dr. Wolf?

A No, my husband was.

Q Is your husband deceased now, m'am?

A Yes, he is.

Q I show you Government Exhibit No.117 for Identification. I ask you to look at the various documents on Government Exhibit 117 for Identification and tell us whether you know what they are?

A Yes, they are checks issued by my husband payable to Dr. Wolf.

Q Do you recognize your husband's signature?

A Yes, I do.

Q Would you look at each of the several checks and tell us whether or not his signature is on each of the checks?

A Yes, it is. Yes, these are his checks.

Q These were for medical services?

A Yes.

Q Would you tell us how many physical documents are included in Government Exhibit 117 for Identification?

A 14.

MR. LAWYER: Your Honor, I offer 117 in evidence. If they are received I will read the dates.

THE COURT: All right.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark it.

xx [Government Exhibit 117 received in Evidence]

MR. LAWYER: May the record reflect that Government Exhibit 117 in Evidence contains various checks dated in the years 1966, 1967, 1968 and 1969.

I have no more questions of this witness.

MR. APPLEMAN: No questions, your Honor.

THE COURT: Thank you, Mrs. Rubel. You may be excused.

[Witness excused]

MR. LAWYER: We call Catherine Rompf.

C A T H E R I N E R O M P F, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What do you do for a living?

A I am a benefits advisor for ITT.

Q A benefits advisor for International Telephone & Telegraph?

A Correct.

Q Do you know a person by the name of Dr. Robert Wolf?

A Yes.

Q Do you see that person in the courtroom?

A Yes, I do.

Q Would you point him out, m'am.

A Sitting there [indicating].

THE COURT: Yes, the identification is made.

Q Have you visited Dr. Wolf as a patient before, m'am?

A Yes, I have.

Q I show you Government Exhibit 116 for Identification. Would you look at that and tell us whether you are able to identify it.

A Yes, I can.

Q Keep your voice up, please.

A Yes, I can.

Q What is it?

A It is the receipt for my teller's check that I sent to Dr. Wolf.

Q In payment for medical services?

A Yes.

Q Did you supply this receipt to the United States Attorney's office?

A Yes, I did.

MR. LAWYER: We offer 116.

THE COURT: What kind of check did you send to the Doctor?

THE WITNESS: A teller's check.

THE COURT: A teller's check?

THE WITNESS: Yes.

THE COURT: You mean you went to a bank?

THE WITNESS: Yes.

THE COURT: And got a bank check?

THE WITNESS: I withdrew it from my savings account in the form of a teller's check.

THE COURT: But I take it that the teller's check probably didn't show your name on it?

THE WITNESS: The check -- The receipt does not show my name on it, but the check had my name on it.

THE COURT: This receipt doesn't have your name on it?

THE WITNESS: No.

THE COURT: But this is a receipt from the bank?

THE WITNESS: It was a check that had a carbon attached to it and this is the carbon and the section that is torn off, the original check, has my name on it.

THE COURT: When you described this as a receipt, what you meant, I suppose, if I understand you now, is that it is a carbon copy of the teller's check?

THE WITNESS: Yes, that is right.

THE COURT: All right.

MR. APPLEMAN: I have no objection, your Honor.

THE COURT: All right.

xx [Government Exhibit 116 received in Evidence]

Q How much was the total bill for?

A The total bill was $45.

Q The check says $25. How did you pay the remainder?

A $20. in cash.

MR. LAWYER: I have no more questions, your Honor. I do ask permission to read the date of Government Exhibit 116, and that date is June 27, 1969.

THE COURT: All right.

MR. LAWYER: $25.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Miss Rompf, the $45. which you state the Doctor billed you, do you have a copy of the bill which the Doctor rendered to you?

A I have a Xerox copy of it.

Q Did you bring that with you?

A Yes.

Q May I see it?

A Yes.

Q Did the Doctor have to perform any tests with regard to the treatment received that day?

A Yes, sir.

MR. LAWYER: Objection.

THE COURT: I will permit it. What was the answer?

THE WITNESS: Yes, he did.

MR. APPLEMAN: I have no further questions, your Honor.

THE COURT: Anything else, Mr. Lawyer?

MR. LAWYER: No, sir.

THE COURT: Thank you, Miss Rompf, you are excused.

[Witness excused]

MR. LAWYER: Mr. Antonio J. Moreau.

B27 ANTONIO J. MOREAU, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

THE COURT: Mr. Moreau, try to keep your voice up, please, because we want the farthest jurors there to hear you. You probably are not used to speaking in a loud voice, but you will have to try here. Do you understand?

THE WITNESS: Yes.

THE COURT: All right, thank you.

Q What is your occupation, Mr. Moreau?

A I am retired.

Q What did you do when you were working?

A I used to be a foreman cabinetmaker in a furniture shop, sir.

Q Do you know a person named Dr. Robert L. Wolf?

A Yes.

Q Do you see that person in court?

A Yes, right there [indicating].

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes.

Q How did you come to meet Dr. Wolf, sir?

A He is my wife's doctor.

Q Your wife's doctor?

A Yes.

Q Sir, who paid for your wife's medical services from Dr. Wolf?

A I did.

Q I show you a copy of one check included in Government Exhibit 48B already in Evidence and ask you to look at the check I am showing you, sir, and tell us whether or not you recognize it?

A Yes, I do recognize it.

Q Is that a check you made out, that is, the original of which you made out?

A Yes.

MR. LAWYER: Your Honor, may the record reflect that the witness is referring to the check payable to the order of Dr. Robert L. Wolf dated September 29, 1969 for $65.

THE COURT: That is part of Exhibit 48B.

MR. LAWYER: Already in evidence.

THE COURT: Yes. That is a check deposited in the Barclays Bank.

MR. LAWYER: Yes, sir.

Q Mr. Moreau, I show you a second check, that is, a copy thereof included in Government Exhibit 48B in Evidence and I ask you to look at that document and tell us whether or not you wrote out the original check?

A I did.

Q This is your signature?

A That is my signature.

MR. LAWYER: May the record reflect that the witness is referring to a copy of a check dated November 3, 1969 payable to Dr. Robert L. Wolf in the amount of $40.

THE COURT: Was that for medical services to your wife?

THE WITNESS: Right, Judge.

Q Mr. Moreau, I show you a third copy of a check included in Government Exhibit 48B in Evidence. I ask you to look at the copy of this original document and tell us whether or not you made out the original check?

A I did.

Q Is this your signature at the bottom?

A Yes, sir, that is my signature.

THE COURT: What is the date of it?

Q Can you make it out, sir? The year is 1969. What is the month and the day?

A December 8, 1969.

THE COURT: December 8, 1969. Was that for medical services?

THE WITNESS: Yes, sir.

MR. LAWYER: May the record reflect I am now showing the witness Government Exhibit 44 already in Evidence.

Q Mr. Moreau, I show you one of the photographic copies of a check included in Government Exhibit 44. Would you look at this copy, sir, and tell us whether or not you wrote the original check?

A That is mine, yes, sir.

Q Was it for medical services for your wife?

A Yes, sir.

THE COURT: What is the date of that check?

MR. LAWYER: June 2, 1969 for $25.

Q Did you issue other checks payable to Dr. Wolf in 1969?

A I can't hear you.

Q Did you give other checks to Dr. Wolf in 1969?

A Yes, sir.

Q Do you recall how many?

A I don't remember, but I have the stubs there.

Q I show you Government Exhibit 115 for Identification. Do you know what Government Exhibit 115 is, sir? What is this book?

A That is my check stubs.

THE COURT: Mr. Moreau, try to speak louder. We are having difficulty hearing you.

Q You stated that is your stub book. Would you look thru your stub book and tell us how many checks you made out to Dr. Wolf as reflected by your check stub book, the number?

A No.101, one hundred one. You want the amount?

Q Just tell us one --

A 2, 3, 4, 5, 6.

Q What happened to the original checks, sir, that you made out?

A Well, I had a flood in my apartment and I have a box where I have all the original checks and they got all wet, so I have to throw them in the garbage.

Q Did you make out the stubs to which you have just referred in Government Exhibit 115 for Identification at the time you made out the checks?

A Yes.

Q And have you since that time retained this book, that is Government Exhibit 115?

A Yes.

Q Without looking at the book, do you know what the stubs say?

A Yes, I know.

Q Do you know the amounts on the checks, sir, without looking at the book?

A No, because they are different amounts.

MR. LAWYER: I offer the stubs as past recollection recorded.

THE COURT: All right, show it to Mr. Appleman. I take it you are offering the six stubs to which the witness referred.

MR. LAWYER: Yes. If they are received I will read the information to the jury.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right.

xx [Government Exhibit 115 received in Evidence]

MR. LAWYER: Your Honor, Mr. Appleman, on behalf of the defendant, is willing to stipulate that we simply read the information from the stubs and the information will be in evidence and we will return the book to the witness.

THE COURT: All right.

Q Mr. Moreau, does the first stub, which is numbered one hundred one -- Is that right?

A Yes.

Q -- made out to Dr. Wolf on January 23, 1969 for the amount of how much, sir?

A $25.

Q The second stub numbered 105, made out to Dr. Robert Wolf on February 13, 1969 for how much, sir?

A $150.

Q The third check, No.106, was made out to Dr. Robert Wolf on February 13, 1969 for how much?

A $25.

Q The fourth check, numbered 123, was made out on March 10, 1969 to Dr. Robert Wolf for how much?

A $96.

Q The fifth check numbered 135 was made out on April 7, 1969; is that right, sir?

A 1969.

Q And it was made out to Dr. Robert L. Wolf for how much?

A $25.

Q And the last check numbered 155, dated May 3, 1969 payable to Dr. Robert Wolf is for how much?

A $24.

Q Were all of these checks issued to Dr. Wolf?

A Yes.

Q As payments for medical services for your wife?

A Yes, sir.

MR.LAWYER: No further questions.

MR. APPLEMAN: I have no questions, your Honor.

THE COURT: Thank you, Mr. Moreau, you may be excused.

[Witness excused]

MR. LAWYER: The Government calls Donald Weinberger.

[Mr. Fruchtman left the courtroom]

DONALD WEINBERGER, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Mr. Weinberger, what do you do for a living?

A I am an attorney.

Q For whom do you work?

A I work for the Legal Aid Society of the City of New York.

Q Do you know a Dr. Robert L. Wolf?

A Yes, I do..

Q Do you see that person in court?

A Yes, I do.

Q Where is he?

A He is at that second table.

Q How did you come to know Dr. Wolf, sir?

A I know him in his professional capacity. I know him in my professional capacity and also socially.

Q What is your father's name?

A Martin Weinberger.

B28 Q Is Mr. Martin Weinberger presently deceased?

A Yes, he is.

Q Was Dr. Wolf treating him at some period?

A To my knowledge, yes, he was.

Q Do you recognize your father's signature when you see it?

A Yes.

Q Are you presently the executor of your father's estate?

A That is correct.

Q I ask you to look at Government Exhibit 120 for Identification which I have placed before you, sir. Do you know what the documents in Government Exhibit 120 are?

A Yes, I do.

Q What are they?

A Those are various checks.

Q Do they contain the signature of your father, sir?

A Yes, they do.

THE COURT: Are they checks that your father issued?

THE WITNESS: Are they checks that my father issued?

THE COURT: Yes.

THE WITNESS: They bear his signature.

THE COURT: Do they seem to be checks he issued?

THE WITNESS: Yes, your Honor, they do.

THE COURT: Were they found in your father's effects?

THE WITNESS: Yes, they were.

Q Would you just tell us how many separate checks are included in Government Exhibit 120 for Identification?

A 30.

Q 30?

A Yes. I'm sorry, 31.

MR. LAWYER: We offer Government Exhibit 120.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

xx [Government Exhibit 120 receive in Evidence]

MR. LAWYER: May the record reflect that Government Exhibit 120 contains various checks dated for the years 1966, 1968 and 1969. There appear to be no 1967 documents. I have no more questions of this witness.

MR. APPLEMAN: I have no questions of this witness, your Honor.

THE COURT: Thank you, Mr. Weinberger, you may be excused.

[Witness excused]

MR. LAWYER: The Government calls James Paul Jannuzzo.

JAMES PAUL JANNUZZO, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation? What do you do for a living, sir?

A I am in advertising.

Q What is the name of the business you work for?

A ITT.

Q International Telephone & Telegraph?

A That is right.

Q Do you know a person named Dr. Robert L. Wolf?

A Yes, I do.

Q Do you see that person in the court?

A Yes, I do.

Q How did you come to meet him, sir?

A He was a physician that I visited.

Q In a patient, doctor relationship, sir?

A That is right.

Q Sir, I show you a document which purports to be a copy of a check included in Government Exhibit 44 already in Evidence. I ask you to examine the document, sir, and tell us whether you recognize it.

A Yes, I do.

Q What is it?

A It is a check of mine to R.L. Wolf, M.D. in the amount of $50.

Q Is this your signature or a copy of it?

A Yes.

MR. LAWYER: May the record reflect that the document to which the witness has referred bears the date June 6, 1969 payable to Dr. Robert L. Wolf for $50.

THE COURT: And that is part of Exhibit 44?

MR. LAWYER: Yes, sir.

Q I ask you to look at Government Exhibit 111 which I have placed before you, sir, which has been marked for identification. Do you recognize the papers included on Government Exhibit 111?

A Yes, these are check stubs of mine.

Q To whom did you make out the original checks, sir?

A There is one on January 7, 1969 to R.L. Wolf, M.D. for $25. and one on 11/10/68 to R.L. Wolf, M.D. for $45.

Q Where are the originals?

A I do not have the originals. I did not keep them from that date. I had no medical deductions so I had no to keep them.

Q Is it fair to say you just threw them out or destroyed them?

A Yes.

Q Did you make out the stubs which are included in Exhibit 111 contemporaneously, at the time you made out the checks?

A Yes, I did.

Q Did you double-check the stub against the checks?

A Yes.

Q Without looking at Exhibit 111 do you know what is on it insofar as the dates, the amounts, etc.?

A Of all the stubs? No. The two stubs that I just mentioned to you, yes.

Q How much?

A One was for $25. and one was for $45. I guess the $45. check was the 1968 check and the $25. was in 1969. I don't recall the dates.

MR. LAWYER: In view of that I have no desire to offer 111 and I have no more questions of the witness.

THE COURT: All right. Any questions, Mr. Appleman?

MR. APPLEMAN: I have no questions, your Honor.

THE COURT: All right, thank you Mr. Jannuzzo. You may be excused.

[Witness excused]

MR. LAWYER: Your Honor, I have run out of witnesses.

THE COURT: All right. Mr. Foreman, ladies and gentlemen of the jury, we will excuse you a few minutes early and we will start in tomorrow morning at 9:30. It is gratifying to note how punctual the jury was this morning. I hope we can repeat the performance tomorrow morning at 9:30.

Please keep in mind my instructions: Do not discuss the case amongst yourselves or with anybody else. You may be excused. Thank you.

[The jury left the courtroom]

THE COURT: What will we do about Mr. Edelstein tomorrow? At what time will he be here?

MR. LAWYER: I am advised that Mr. Edelstein will be here at 10:30.

THE COURT: Now, Mr. Appleman, let's go to your motion to strike and let me give you a chance to tell me more about that. First let's identify just exactly what it is you want stricken, and you can call on the Government to let you have the exhibits.

MR. APPLEMAN: 48A or B. There were two checks in one of those items.

THE COURT: Take your time and state the exhibit numbers. Let me see exactly what it is.

MR. LAWYER: Your Honor, we will stipulate --

THE COURT: I am looking at Exhibit 48B. Your motion is addressed to two checks, one dated January 5, 1970 for $200. and one dated January 4, 1970 in the amount of $25.; is that right?

MR. APPLEMAN: That is correct.

MR. LAWYER: The Government will consent to those two documents being removed from Government Exhibit 48B.

I might point out that there has been no testimony about the total amount of money included in the exhibit and the jury has not seen the exhibit, so I don't think it creates any problem, your Honor. We will physically remove them now.

THE COURT: The motion is granted on consent. Don't you think that it is a very sensible suggestion just to physically take them out now?

MR. APPLEMAN: Yes, your Honor.

THE COURT: There is no use in my explaining it to the jury under the circumstances.

Anything else?

MR. APPLEMAN: Yes.

THE COURT: What is that?

MR. APPLEMAN: No.42.

THE COURT: Let's find 42.

MR. APPLEMAN: No, your Honor, that was a mistake on my part. I stand corrected.

THE COURT: All right.

MR. APPLEMAN: That is all, your Honor.

THE COURT: Then we have solved that problem. Thankyou very much. We will call it a day, then. Good night, gentlemen.

[Trial recessed until November 15, 1973 at 9:30 o'clock a.m.]

mcs

UNITED STATES OF AMERICA

vs. 73 Cr. 486

ROBERT L. WOLF,

Defendant.

-----

New York, November 15, 1973:
9.40 o'clock a. m.

(Trial resumed.)

- -

THE COURT: We have a sick juror, Juror No. 2. She telephoned to my chambers just a moment ago since I came down here. She says she is sick and can't come in today, so that being the case I think we'll have to go ahead and use an alternate.

All right, Mr. Clerk.

MR. LAWYER: Could we mention a couple of things on the record before that?

THE COURT: Yes.

MR. LAWYER: Mr. Peter Esquerra, who is the witness from the Bank of New York, spoke to me this morning.

THE COUT: Wouldn't it be better to do that at the recess?

MR. LAWYER: I don't care.

THE COURT: Does it make any difference?

MR. LAWYER: Not to me.

THE COURT: All right. I hate to keep the jury waiting. I will make a note to do it at the recess.

MR. APPLEMAN: Your Honor, is Juror No. 2 seriously ill?

THE COURT: I don't know. She can't come in today.

(Jury present.)

THE COURT: We have had word in a telephone call to my chambers a moment ago that Juror No. 2, Dorothy Brown is ill today and will not be able to come in. Under the circumstances the only way that we can keep going is to ask Mr. Ganucci, Alternate Juror No. 1, if he would please take the place of Juror No. 2. We will have to excuse her for the trial.

Then, Alternate Juror No. 2, perhaps you can move down and take the seat in the front row.

Thank you, ma'am.

All right, Mr. Lawyer, now we can go on.

MR. LAWYER: The Government calls Marie Milcznski.

- -

cs3

RITA MILCZNSKI, called as a witness in behalf of the Government, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Are you employed at present, ma'am?

A No.

Q Do you know a person by the name of Dr. Robert L. Wolf?

A Yes.

Q Do you see that person in court?

A Yes.

Q Where is he seated, ma'am?

A The table over there (indicating).

THE COURT: I think that the identification is made.

All right.

Q Mrs. Milcznski, could we ask you to try to keep your voice up, ma'am?

A Yes.

Q Have you ever been employed by Dr. Wolf?

A Yes.

Q In what capacity?

A Receptionist and secretary.

Q Over what period of time were you employed by him?

A From 1961 until May of 1969.

MR. LAWYER: May I inquire if the jurors in the back can hear?

THE COURT: Mr. Reporter, read the last answer.

(Record read.)

THE COURT: Now, you probably are not used to speaking in a room as large as this and I know it is difficult, by try to speak up so that the lady who is sitting at the farthest position in the jury box can hear. It is not easy, I know, but please try, ma'am.

Q Where was Dr. Wolf's office located during the period you worked for him?

A 20 East 74th Street.

Q In Manhattan?

A Yes, in Manhattan.

Q Did he have any other office during that period, to your knowledge?

A Not to my knowledge.

Q What type of practice did he have, just in general?

A Internal medicine.

Q Primarily a general practitioner?

A An internist.

THE COURT: Isn't that what we used to call a general practitioner?

THE WITNESS: I would call it a glorified general practitioner.

Q What hospital, if any, was he associated with, ma'am?

A Mount Sinai Hospital.

Q To your knowledge was he also associated with the faculty of the Mount Sinai School of Medicine?

A Yes.

Q What did he do there?

A An assistant professor.

Q He taught?

A He taught.

Q Did he do research?

A He did research. He was on the staff and he taught at the School of Medicine.

Q I direct your attention to the four-year period which spans 1966 through 1969, inclusive.

What hours in general did you work during that period, ma'am?

A Approximately 20, 25 hours a week. There were times it was longer because I was also on the payroll of Mount Sinai Hospital and acted in the capacity of a medical secretary.

Dr. Wolf wrote up research papers for various medical journals.

Q What were Dr. Wolf's office hours in so far as receiving patients; that is, the standard hours?

A Monday evenings from four until whatever time there were no longer patients. It could vary from, say, 7 to 9 o'clock at night. Tuesday, Wednesday, Thursday and Friday in the morning from nine until one.

Q Were you a permanent employee for Dr. Wolf as his secretary-receptionist?

A Yes.

Q What other permanent employees were there?

A In the office?

Q In that capacity as secretary-receptionist?

A No one.

Q What other doctors shared the practice with Dr. Wolf at that office address?

A There was only -- a short time there was another doctor that had hours there, but I don't think it lasted too long. Maybe a year or so.

Q Was that during the 1966-'69 period?

A I believe so. I couldn't pinpoint it. It was only a short period of time.

Q Tell us briefly what in general did you do as a medical secretary?

A Are you referring to strictly for Dr. Wolf in the office?

Q Yes, I am.

A Made appointments, sent out monthly statements and in general whatever letters he might have, you know, to dictate on various things.

In the years that you are referring to, in the beginning years with Dr. Wolf, I had nothing whatsoever to do with any accounts, but in the years you are referring to I did make entries on the patients' cards and in the daily receipt book that he --

Q How were the patients in general required to pay; that is, was it cash, was it check or a combination or what?

A I would say generally check.

Q Did people have to pay on the spot?

A No, I would say to my knowledge the majority of the patients received statements and they paid -- they sent their money in by check.

Q Were there times when cash payments in fact were made by patients?

A There were times, yes, that cash payments were made.

Q What type of insurance groups or Government groups did he accept payments from such as Blue Shield or anything of that nature?

A He accepted payments from Medicare and GHI.

Q What is GHI spelled out?

A Group Health Insurance.

Q Tell the Court and jury, ma'am, what types of records the doctor kept which would pertain to each individual patient; that is, how many records would there be for a given patient and what would you call them within the office?

A Each patient had his own file which would contain his history, the treatment, diagnosis, any results of tests pertaining to that patient. Each patient also had a ledger card that I might refer to as a payment card, sort of a 3 by 6 card on which would be the date the patient came in, the fee and any subsequent payments that were made, the date they were made and the amount.

Q Was there any other type of book that was kept or that the doctor's office kept?

A Well, there was also a book I would refer to as a daily receipt book in which he would make entries of any money that came in on a particular day.

Q How were the sheets in this daily receipt book arranged? Describe the book, in other words.

A It was a form of a looseleaf book. It wasn't a looseleaf book per se, but it was that form.

Q Could you remove the pages out at will?

A Yes, at will you could.

Q How many patients' entries would go on a given sheet?

A I didn't hear you.

2 Q How many patients' names would you put on one sheet? Was it one sheet per patient or not?

A No, there would be a listing of several on a page.

Q Would you do these in chronological order as patients came in?

A Yes.

THE COURT: I don't think it would be as patients came in. As payments came in.

THE WITNESS: I assumed that is -- payments, yes.

THE COURT: It was payments that came in.

MR. LAWYER: Yes.

Thank you, your Honor. I'm sorry.

THE WITNESS: Yes.

Q What information besides the patient's name and the payment would go in a daily receipt book entry?

A Just the date, the patient's name and the amount received.

Q Prior to 1966, to the best of your recollection did you keep that book at all, that is, make entries in it?

A No.

Q Did there come a time when you did begin to make entries in that book?

A Yes.

Q Approximately when to the best of your recollection?

A It was either the latter part of 1965 or possibly early 1966.

Q Tell us how that came about?

A Dr. Wolf told me that he was being audited and he said that his books or the records he kept were quite a mess and since he thought he would have to produce them he wanted me to rewrite them.

Q Which book are we referring to now?

A The daily receipt book.

Q Continue.

A He gave me a list of fresh papers. He also took out whatever year it pertained to. I just can't tell you accurately. And I was told to redo the sheets, and he told me to be careful to notice the changes that he had made on the old sheets. The changes consisted of lines drawn through certain patient's names and the amounts and also the totals were changed, and he said to be careful that I copied it according to these changes.

He further instructed me at that time to use different pens in doing this up so that it would appear that it was done on a daily basis rather than at one sitting.

THE COURT: At what time was this, please, ma'am?

THE WITNESS: I would think it was either in the latter part of 1965 or possibly 1966. I'm not sure of the dates.

THE COURT: All right.

MR. APPLEMAN: Your Honor, I object to this line of questioning. It does not pertain to the year 1966 through the year 1969. If she did this in the latter part of 1965 it has no application to the years in issue here.

THE COURT: No, I will take it.

Overruled.

Q Did there come other times when you did that, ma'am, after that particular occasion?

A There were a few times after that that I might have to change one particular page.

Q Were you dropping names? In so far as the cash receipt pages, the looseleaf pages that Dr. Wolf gave you, were names deleted, ma'am?

A He crossed them out and they were not added -- and they were not put in the new pages that I wrote.

Q About how long did this go on? Into what year did this extend?

A I beg your pardon?

Q Into what year did this extend? Did it go into 1966?

A That was the fist I would say that I started to do and after that actually, to regress for a moment, I sent out the monthly statements to the patients. In doing that I would occasionally come across cards where the patient's name was underlined.

Q What card was this?

A The patient's payment card.

Q This is different from the receipt book?

A Yes. The patient's payment card -- as I say, I am regressing, when I sent out statements occasionally there were cards where the patients' names were underscored. It wasn't until I had -- I was asked to make these other changes in the daily receipt book that I had noticed that I had noticed that some of the names that had been crossed out were the names that I had come across in billing that were also underlined.

Q Did Dr. Wolf speak with you about these payment cards and the underlinings at any time?

A As I say, after that time more and more I would become involved in making entries.

Dr. Wolf did tell me in entering, in making the entries in the receipt book to be careful not to make entries which pertained to the patients' cards that were underscored.

Q Approximately over what period, that is what years, did you continue to receive cards with the names underscored?

A This continued until the end of my employment with Dr. Wolf.

Q Which was in May of 1969?

A Yes.

Q Do you recall any of the names of those patients whose cards had the names underscored?

A Can I recall cards that had been underscored?

Q Any of the names of any of those patients?

A Well, when I left there were quite a few, by the time I left, Lillian Spencer, Mr. and Mrs. Clifton Walker, Mr. and Mrs. Henry Walker, Jennie Altheimer, Nathan Schwartz.

Does that cover enough?

Q All right.

Who opened the mail that came into the office, ma'am?

A Dr. Wolf always opened his own mail.

Q Were there occasions when you opened it?

A Never.

Q Were you under instructions not to open it?

A Yes.

Q Were there occasions when you deposited checks into the bank for Dr. Wolf?

A Yes.

Q What bank?

A Chemical Bank.

Q Where was that bank located?

A 74th Street and Madison Avenue.

Q Did you ever make cash deposits?

A No.

Q Who made out the deposit slips?

A Generally Dr. Wolf made out the deposit slips and I just went and deposited them. It wasn't until the last few years, I would say the last two, approximately, that Dr. Wolf would give me the checks that he wanted deposited and I would make out the deposit slip.

Q How much were you paid, ma'am, in general over that period?

A By Dr. Wolf?

Q Yes.

A At what period in time?

Q By the time you left.

A At the time I left Dr. Wolf paid me $3 an hour for a period only of 20 hours. As I tried to say before, I was also on the payroll of Mount Sinai Hospital from which I got the greater amount of money.

Q Were there times when Dr. Wolf requested you to cash checks for him?

A Yes.

Q What kind of checks were these, his personal checks or what?

A Patients' checks.

Q Did you do this?

A Yes.

Q Over what period of time?

A I would say from 1967 till the time I left.

No, not till the time I left. I would say it was during the period 1967 possibly to 1968.

Q Approximately how often would this go on -- on a weekly or monthly basis?

A It is difficult to say. It would depend on how the checks came into the office. I might go to the bank several times one week and maybe not at all another time.

Q Who would endorse those checks or would they be endorsed when you cashed them?

A The checks that came in were actually -- the checks that were entered in the daily receipt book were kept separate as compared to can I say the preferred checks just for identification purposes.

Q What do you mean by preferred checks?

A The checks that were not entered into the daily receipt book. And the checks that were entered, if I made a deposit he had a stamp. They were just stamped "For deposit."

3 Q The checks that were deposited --

A In the checking account were stamped with a, you know, for deposit only. It was a stamp.

Q And they were not endorsed?

A They were --

THE COURT: They were endorsed by a stamp?

THE WITNESS: By a stamp.

Q I'm sorry?

A They were not a written deposit.

THE COURT: Only to the account of Dr. Wolf.

MR. LAWYER: Yes.

Q And the checks which were cashed, ma'am, how were they endorsed?

A Dr. Wolf endorsed those checks.

Q In some cases when you went to the bank yourself did you endorse them also?

A There were times when I had to countersign because the cash was given to me.

Q What did you do with the cash?

A Gave it to Dr. Wolf.

Q Was that the invariable practice?

A Yes.

Q Mrs. Milcznski, I have put before you Government's Exhibit 118 in evidence. Would you look at the backs of those various checks, ma'am, and tell the Court and jury whether or not you cashed any of them and how you know?

A The checks that are signed by Dr. Wolf and countersigned by me, I know these were -- I know definitely they were, and as a matter of fact checks that were signed only -- I didnot always have to countersign the checks in the bank. Sometimes when the teller knew me and they would just cash the checks. There were other times when I had to countersign.

Q When you did countersign, how could you tell that you cashed them?

A They were endorsed by Dr. Wolf. But there were many of the checks that had no written endorsement on them. I know I had nothing -- they never were --

Q Would you count the checks in Government's Exhibit 118 that you cashed for or on behalf of Dr. Wolf?

A That I cashed?

Q Yes.

A Nine checks.

Q Nine checks on Government's Exhibit 118?

A Yes.

Q All of those are endorsed By you and/or Dr. Wolf; is that correct?

A Most of them were endorsed By Dr. Wolf. I only saw one there that I had countersigned.

THE COURT: I take it what you ate telling us in summary is that checks which were deposited in the bank account had a stamped endorsement and checks which were manually endorsed by Dr. Wolf were checks which you would take to the bank and cash and get the money and gave him the money.

THE WITNESS: Yes.

THE COURT: And of course those that were manually signed, endorsed by Dr. Wolf, the tellers who knew you would give you the money on his endorsement alone and if there was somebody who didn't know you they would reuire you to put your name on it too?

THE WITNESS: Yes.

THE COURT: All right, thank you.

Q I show you Government's Exhibit 117 in evidence. I ask you to look at the various checks included on the exhibit and tell the Court and Jury how many of those checks that you cashed for or on behalf of Dr. Wolf?

A Six.

Q Six?

A Yes.

Q You can tell the same way because of the signatures on the back?

A Yes.

Q I show you Government's Exhibit 114 in evidence. Would you tell the Court and jury how many checks on Government's Exhibit 114 were cashed as you have described, ma'am?

A Nine.

MR. LAWYER: May the record reflect that Government's Exhibit 117 refers to checks in evidence and the various checks refer to the years 1966, 1967, 1968 and 1969.

THE COURT: Yes, they are checks of Mr. Rubel.

MR. LAWYER: Yes, and Government's Exhibit 118 in evidence refers to the various checks of Mrs. Eleanor Schneider. The years involved are 1966, 1967, 1968 and 1969.

The checks included in Government's Exhibit 114 in evidence refer to checks of Mrs. Harry Mitnick, and all of the checks identified by the witness on the stand pertain to the year 1968.

Q I show you now Government's Exhibit 71-B in evidence.

Would you tell us how many, if any, of the checks included in that exhibit were cashed as you have described?

A Six.

THE COURT: And they are ITT checks?

MR. LAWYER: Yes, that is correct.

The years which she has identified refer to 1968.

Q Please look at Government's Exhibit 120 in evidence, ma'am, and tell us whether any of those checks were cashed as you have described?

A 13, I believe.

MR. LAWYER: May the record reeflect that Government' Exhibit 120 refers to the checks of Martin Weinberger and the witness was Donald Weinberger, your Honor.

THE COURT: Yes, the son of the writer of the checks.

MR. LAWYER: Yes. The father was deceaased.

Q I show you Government's Exhibit 108 in evidence. I show you one check.

Was that cashed by you or by Dr. Wolf?

A Well, everything, as I said before in the latter years, it went in with a stamp and anything that was endorsed usually was -- I could qualify that to some extent, though.

There were times that he did make deposits into the savings account which also at that time were usually endorsed.

Q What savings account was that, ma'am?

A In the Chemical Bank. And there was some other bank. I don't know the name of it.

Q Did you ever make deposits to that savings account?

A Yes.

Q About how often did that happen?

A After 1967 Dr. Wolf did convert quite a bit of his money into cash. It was after he separated from his wife, and made deposits. First he started by making deposits into the savings accounts. A few days later he would make a withdrawal on the savings accounts. This continued for a while until one of the bank officials got a hold of me and told me this certainly wasn't normal practice and couldn't continue, and it was after that time that we would -- would make a deposit into the checking account and I would cash the remaining checks. And that continued for quite a while until once again one of the bank officials told me that they did not do things like that; that check cashing was just a courtesy extended for a few checks, not for any large amounts.

Q When there were withdrawals made from the savings account, were they by cash or check?

A Cash.

MR. LAWYER: May the record show that Exhibit 108 which the witness was just shown, referred to checks of Mrs. Rose Fusco.

MR. APPLEMAN: Would the reporter read the last question and answer?

(Record read.)

Q I show you Government's Exhibit 65-D. I show you two checks. If I ask you the same questions about those checks would your answers be the same?

A Can I possibly look at them?

Q I'm sorry, excuse me. They are just the ones --

A The one that is signed is cashed. There is one check that was turned into cash.

Q I show you a second check in this exhibit.

A Yes, this was --

THE COURT: What is the check which the witness has identified, of course the record won't show it?

MR. LAWYER: Yes.

The check is a Medicare check to Dr. Wolf dated 9/22/69 for $42.80.

A In all fairness, I was not working for Dr. Wolf at that time, so I don't know.

Q You couldn't say for sure?

A I could not say.

4 MR. LAWYER: Your Honor, I withdraw all of the questions and ask that the answers be stricken with

regard to Government's Exhibit 65-D.

THE COURT: All right.

Q I show you Government's Exhibit 104.

Would you tell us whether or not any of those checks were cashed?

A You know, in looking through those other checks I actually wasn't looking at the dates. It is just that that struck me.

I don't know if you want to go through them again.

MR. LAWYER: I think, your Honor, the record shows the years.

Q Just tell us again, when did you resign from Dr. Wolf's employ?

A May of 1969.

MR. LAWYER: May of 1969. I think, therefore, the checks will show that.

THE COURT: Now you are showing her Exhibit 104?

THE WITNESS: Yes, sir, for identification. I'm sorry. It is not in evidence.

THE COURT: All right.

What is the question?

Q Can you tell us whether any of those checks were cashed by you?

A Two.

THE COURT: Which two? Can you just give us the dates?

MR. LAWYER: May the record reflect that she identified one check dated September 30, 1968 payable to Dr. Robert Wolf for $30. It is signed by Henrietta Bernstein drawn on her account at the First National City Bank, 1501 --

THE COURT: I think the dates are all we need.

MR. LAWYER: Very well.

THE COURT: That is one check. What about the other one?

THE WITNESS: I assume this one (indicating).

Q You say you assume that one?

A Yes. Well -- I cannot assume this one since I see Barclays Bank written.

Q Barclays Bank?

THE COURT: All right, it is one check.

A Yes, sir.

Once again I have not been examining these checks too closely.

THE COURT: This one is September 30, 1968?

MR. LAWYER: Yes.

A I would say this procedure in turning money into cash only went on from 1967 until 1968. After that time it did stop.

THE COURT: All right. You mean changing checks into cash, not changing money?

THE WITNESS: No, cashing things. After that it was just depositing a certain amount to the checking account to cover office expenses.

Q I show you Government's Exhibit 107.

Tell us whether or not any of those were cashed?

THE COURT: Is that in evidence?

MR. LAWYER: For identification. I'm sorry.

A One.

Q This one, ma'am?

A Yes.

THE COURT: What is the date of that?

MR. LAWYER: February 6, 1968.

MR. APPLEMAN: What is the exhibit number?

MR. LAWYER: 107 for identification.

Q Do you recognize the name Brian Lazelle?

A Yes.

Q Where did you first hear that name?

A Barclays Bank.

Q Barclays Bank of New York?

A Barclays Bank, yes, Barclays Limited or Barclays Bank of New York.

Q What was your relationship with Mr. Lazelle, if any?

A I would call Mr. Lazelle to let him know when Dr. Wolf was going down to see him.

Q Who told you to call Mr. Lazelle?

A Dr. Wolf.

Q What period did this cover, ma'am, approximately?

A Well, I would think somewhere from 1963 until I terminated my employment there.

Q Tell us whether or not you ever had any conversation with or was there any talk between you and Dr. Wolf concerning a Swiss bank account?

A I wouldn't say that we had conversations. I did know Dr. Wolf had a Swiss bank account.

Q How do you know?

A Because we -- I had to type lwtters that were going to Switzerland and it would either instruct them to sell certain shares of stock or to buy certain shares of stock and apply it -- I never knew the number because he would always tell me to leave certain spaces where he would put in whatever pertinent information was needed.

Q So you never knew the number of the account?

A No.

Q Where in Switzerland was the bank?

A We would write, if my memory serves me correctly, to a certain gentleman. I don't believe there was the name of a bank. There was the gentleman's name and address and I think it was Zurich, Switzerland.

Q I show you Government's Exhibit 11-A in evidence.

Do you know what that is?

A This would be in preparation for Dr. Wolf's income tax returns.

Q What is this document?

A I beg your pardon?

Q Did you put any of the information on 11-A yourself?

A Yes.

Q Where did you get the information from?

A Dr. Wolf would tell me he had to get ready -- get things prepared for his accountant. We would sit down. He would dictate whatever entries to make and where I should make the entries.

THE COURT: Is that your handwriting on 11-A?

THE WITNESS: The captions on this first page is not my handwriting, but I would say the listing under charitable contributions is my handwriting excepting for these other figures. The figures I believe are in my handwriting but not the totals or none of these extra however you would explain them, none of these little things here or there is my handwriting (indicating).

I would just say the figures are my handwriting.

Q Where did you get the information from to put the figures in?

A Dr. Wolf dictated it to me.

Q Dictated it?

A He took it from his checkbook stubs. That is how he got his information.

Q I show you Government's Exhibit 12-A in evidence.

Do you know what that document is?

A Yes, this is --

Q Speak a little louder, ma'am, please.

A -- check deposits, 1967 is in my handwriting. Not the total, but the amounts.

Q When was that prepared, just approximately?

A It says 1967 on here. I can't recall exact --

Q We understand.

A This says in 1967 on here, check deposits, 1967, yes. So I would only assume that I prepared that in

1968.

Q Around income tax time?

A Yes, that is when this would take place.

Q Where did you get the information that you put on there?

A I think -- check deposits I would get from the check deposit slips. He would give me all the check deposit slips and I would write them down.

Q Dr. Wolf gave you certain slips?

A Yes, and anything else possibly was dictated because, you know, he would tell me. But this is not -- down here, this is not my handwriting, whatever that is.

MR. APPLEMAN: Please ask the witness to raise her voice.

THE COURT: Try to keep your voice up.

Q I show you Exhibit 13-A in evidence, ma'am.

Do you know what that document is?

A This is the same as the previous documents, the preparation for income taxes.

Q For what years?

A It says 1968 on the top.

Q Were some of the entries in your handwriting also on this one?

A Yes. None of the totals are in my handwriting, but I would say that charitable contributions, again that is my handwriting, and these figures again are my handwriting.

Q Finally, ma'am, I ask you to look at 14-A in evidence.

A This is not, definitely not my handwriting.

Q None of it is yours?

A None of it is mine.

MR. LAWYER: No more questions, your Honor.

THE COURT: All right.

Now, Mr. Lawyer, you remember that I told Mr. Edelstein to be here at 10.30.

MR. LAWYER: Yes, sir.

5 THE COURT: What do you suggest we do? Shall we take Mr. Edelstein and finish with him or finish with this witness?

MR. LAWYER: I propose to finish with this witness. I think it is more orderly.

MR. APPLEMAN: May I approach the bench, your Honor?

THE COURT: All right.

(At the side bar.)

MR. APPLEMAN: We will need a recess for 15 minutes to check out check deposits. I just received the papers, the material on this witness as she was testifying. I usually receive and the other 3500 material was received a day or a half a day in advance. This I just received as she was testifying.

THE COURT: Mr. Lawyer, we will keep Edelstein waiting and please explain it is my order that he wait until we reach him. We will take him as soon as we can.

Do you need 15 minutes?

MR. APPLEMAN: I need a half hour but I am only asking for 15 minutes, your Honor. I only hope I can work that fast.

(In open court.)

THE COURT: All right, we will finish with this witness before we take any other witness, but I think we had better take our morning recess now.

The jury may retire.

(The jury left the courtroom.)

THE COURT: All right, Mr. Clerk, we will take a recess.

(Recess.)

(Mr. Fruchtman was present at this point.)

MR. LAWYER: I did have another question. I ask permission to ask just a couple more questions, your

Honor.

THE COURT: All right.

Mr. Clerk, will you get the jury?

(Jury present.)

THE COURT: All right, Mr. Lawyer, you say you have another question.

BY MR. LAWYER:

Q Now, ma'am, were you called before agents of the Internal Revenue Service in June of 1972?

A Yes.

Q How did they get in touch with you?

A I received a letter to go down and appear before the Internal Revenue Service.

Q Did you go down?

A I went down, yes.

Q Did you know why you were being summoned at the time?

A I didn't know anything until I got down there and Mr. Skolnick told me, the special agent, that they were investigating Dr. Wolf and I kind of almost collapsed on the spot because I --

THE COURT: What is this relevant to?

MR. LAWYER: Your Honor, I believe the defense will go into something on credibility. I will just bring it up first.

THE COURT: All right.

A I was nervous to begin with and I could have collapsed then and I did feel --

THE COURT: Wait just a minute for a question.

Q Now, did Mr. Skolnick put questions to you and did you give him certain answers?

A Yes.

Q Were those answers the same thing as you have said on the stand?

A No.

Q And at the time, ma'am, did you say things that were contradictory to what you said on the stand?

A What I said now is contradictory to what I had said to him.

Q Which version is true?

A What I am saying now.

MR. APPLEMAN: I object to that.

THE COURT: No, I will permit it.

MR. LAWYER: I have no further questions.

CROSS EXAMINATION

XX BY MR. APPLEMAN:

Q Mrs. Milcznski, usually after you work for someone the length of time you worked for Dr. Wolf you do become or you are knowledgeable about his personal life. Is that the case with you and Dr. Wolf?

A Yes.

Q At this time that we are discussing, 1966 and 1967, did Dr. Wolf begin having marital problems with his wife?

A Yes.

Q Was Dr. Wolf occasionally rather than frequently in court with his wife pertaining to his marital problems?

MR. LAWYER: Objection.

A Yes.

THE COURT: Sustained.

MR. LAWYER: May the answer be stricken?

THE COURT: Yes, it is irrelevant to anything that is on trial here.

MR. APPLEMAN: It is as to the doctor's state of mind.

THE COURT: I don't believe there is any plea of insanity.

MR. APPLEMAN: No, not a plea of insanity.

THE COURT: All right, nothing else than that is a defense. It is irrelevant.

Q Did the doctor's wife in any way interfere with the doctor's office?

MR. LAWYER: Objection.

THE COURT: Sustained. You can make an offer of proof later, but I won't permit any more questions on this.

Q When you were employed by the doctor was he treating any member of your family?

A What was that?

Q Was the doctor treating any member of your family during this period of time?

A Yes.

Q Who was he treating?

A My husband.

Q What was wrong with your husband?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Did the doctor charge you for the treatment he rendered your husband?

MR. LAWYER: Objection.

THE COURT: Overruled.

A The doctor just accepted what the Blue Cross paid with no extra charge to me.

Q Never charged you any extra fee?

A No.

Q While you were in the doctor's office, with regard to his research activities which you testified to previously, did the doctor travel quite frequently? In other words, did he have to travel to give lectures?

A The doctor traveled quite frequently. He was invited to lecture before various medical conventions.

Q Can you recall which conventions he did attend?

MR. LAWYER: Objection.

THE COURT: I will permit it.

A I couldn't recall the name of the convention. I might give you the countries he attended.

Q Yes, that is quite all right.

A Australia, Africa, Switzerland.

Q In other words, he more or less traveled around the world to give these lectures on his specialty?

A Yes.

Q Do you know if he received any moneys in payment for travel funds?

A I believe the travel funds came from the research money that the hospital received.

MR. LAWYER: I will ask that the answer be stricken unless she can say that she did know or she didn't.

THE COURT: Do you know or are you guessing? That is the whole point.

THE WITNESS: I would say I know because he would have to prepare a statement for the hospital as to the cost of the expense of his trip.

THE COURT: All right.

Q These statements which were prepared for the hospital, is that known as a travel voucher?

A Yes.

Q Would you prepare some of these travel vouchers?

A He would dictate what he wanted done and I would type it up.

Q Was there any travel vouchers prepared by you in your own handwriting rather than typed?

A Not as far as I can recall.

Q I wish to show you a travel voucher which I will first introduce as Defendant's Exhibit B.

(Defendant's Exhibit B was marked for identification.)

xx Q This says:

"A Mount Sinai Hospital request for checks is attached thereto."

Was a travel voucher, name of traveler, Dr. Robert L. Wolf for travel on April 14 --

MR. LAWYER: I object. He should put the document before the witness properly.

THE COURT: Yes, sustained.

Q Will you please tell me if you prepared that document?

A It doesn't look like mine. It looks more like Dr. Wolf's handwriting than mine.

MR. APPLEMAN: I am trying to find some of the witness' handwriting. I don't appear to have any typed so I would take it for granted that the ones I do have are in the doctor's handwriting.

Q Did you type mail for the doctor, correspondence?

A Yes, letters.

Q Did you type any correspondence which was forwarded to Mr. Edelstein?

A Very possible.

6 Q Any tax matters which came into the office, would they usually be referred to Mr. Edelstein, or tax inquiries? In other words, did Dr. Wolf say to Mr. Edelstein, "Please take care of this. I am forwarding this as to the tax return and would you please take care of this"?

A I don't understand the question.

MR. LAWYER: Objection.

THE COURT: I will permit one question at a time in simple form.

Q I show you a letter dated May 25, 1967 written by Dr. Wolf to Mr. Ben Edelstein and it is typed.

MR. APPLEMAN: Please mark this for identification.

(Defendant's Exhibit C was marked for identification.)

xx Q Look at this letter, Defendant's Exhibit C, and see if you typed it?

A Immediately I recognize it. There are my initials (indicating).

Q In other words, you typed this letter which says:

"Dear Ben:

"Enclosed are the tax forms" --

MR. LAWYER: Objection, is it going to be offered or not?

MR. APPLEMAN: I will offer this in evidence.

MR. LAWYER: May I see it?

MR. APPLEMAN: Yes.

MR. LAWYER: I fail to see the relevancy, but I consent to it going in any way.

THE COURT: All right, without objection it will be received.

(Defendant's Exhibit C was received in evidence.)

xx (Mr. Appleman read from Defendant's Exhibit C.)

THE COURT: What is the date of Defendant's Exhibit C?

MR. APPLEMAN: May 25, 1967, and it has Mrs. Milcznski's initials on it.

Please mark this for identification.

(Defendant's Exhibit D was marked for identification.)

xx Q These are four letters addressed to Mr. Ben Edelstein.

Will you please look at these and tell us if you typed those?

A Not typed.

Q This was his response?

A The typed letters are all mine.

THE COURT: What is the answer?

THE WITNESS: The typed letters are all mine, but there was one in written form.

THE COURT: I understand.

MR. APPLEMAN: The one in written form is from Mr. Edelstein to the doctor.

MR. LAWYER: Your Honor, I do have an objection.

On the face of these letters, none of them contain information which can be said to make them speak for themselves.

THE COURT: All right.

MR. LAWYER: Secondly, the handwritten form which is included the witness says she does not recognize one way or the other.

MR. APPLEMAN: These letters would indicate the full reliance on the accountant with regard to all tax questions.

MR. LAWYER: As your Honor will note, there is no information in any of the letters except one which even refers to tax. There is one and I will consent to that one going in.

THE COURT: All right, I will sustain the objection as to everything except the letter dated February 26, 1968. That will be admitted and we can call that Defendant's Exhibit D-1.

MR. APPLEMAN: Thank you, your Honor.

THE COURT: That will be received in evidence as Defendant's Exhibit D-1.

(Defendant's Exhibit D-1 was received in evidence.)

xx Q Will you please read Exhibit D-1. Who is it addressed to?

A Do you want me to read it?

Q Yes, please.

A Addressed to Mr. Ben Edelstein, Empire State Building, Room 5622, 350 Fifth Avenue, New York, New York.

"Dear Ben:

"I have enclosed a form for the commercial rent or occupancy tax. Kindly take care of it as you have in the past.

"Very truly yours."

Q In order to save the Court time, would you state that similar letters may have been written to Mr. Ben Edelstein?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Mrs. Milcznski, you stated that the reason why you changed the testimony from your original interview with the special agent to the testimony before the grand jury was due to the fact that initially you were nervous; is that correct?

A Initially I was nervous and when I found out it was pertaining to Dr. Wolf I just wanted to just disappear from view because I felt a loyalty to Dr. Wolf and I just didn't want to be -- I did not want to get involved in this in any form.

MR. APPLEMAN: I ask that the latter part be stricken.

MR. LAWYER: I object to that.

THE COURT: I will let it stand.

Q How much money did the doctor pay you?

A When I left the doctor?

Q Yes.

A I mean, it changed from the time I started to the time I left. When I left, at that time he was paying me $3 an hour for 20 hours a week, which amounted to $60.

Q Did you receive a W-2 for that?

A No.

Q Did you report that in your income tax return?

A No.

Q You did not report that in your income tax return?

A No.

Q Did you relate that to the special agent?

A I beg your pardon?

Q Did the special agent ask you whether you had reported this money you received from the doctor in your income tax return?

A No.

Q Never asked you that.

Were you aware of the fact that this money should have been reported as income?

MR. LAWYER: I object.

I withdraw the objection.

A Dr. Wolf told me not to report the money I received from him and if I may state further --

THE COURT: No. No, the question was:

Did you know that you should report it and did you answer that you did know you should have reported it?

THE WITNESS: The doctor told me not to report it.

THE COURT: Did you know you should have reported it?

THE WITNESS: Yes, it should have been reported.

THE COURT: That is the answer.

Next question.

Q With regard to your testimony before the special agent on June 15, 1972 you stated with regard to question 20, and this was a question which was asked of you or, rather, were you asked this question and did You make this answer:

"Q What books and records did Dr. Wolf maintain for the recording of his fee income from 1966 through 1969?

"A That I wouldn't know. I didn't have anything to do with that. Only occasionally if I were there and a patient came in and gave something or I would send out bills."

Was that your initial response?

A That was my response then.

Q And you had a better recollection on April 11, 1973 than you did on June 15, 1972 as to what occurred in 1968?

MR. LAWYER: I am very confused about the dates, especially about the question.

THE COURT: Yes, I am too.

MR. APPLEMAN: In other words, on June 15, 1972, which was closer to the timing, to the occurrence she gave one testimony --

THE COURT: Just question the witness, please.

Q In other words, is your recollection as to the events which occurred during the period 1966 through 1968 better in 1972 or in 1973?

A I think I explained that before when I said the testimony before the Internal Revenue was not accurate testimony. I received a subpoena in 1973 to appear before the grand jury and I finally -- it hit me, the seriousness of the matter and I was not thinking of loyalty. I knew that I just had to answer the questions as truthfully and to the very best of my knowledge.

7 Q Did the special agent on June 15, 1972 begin as follows:

"Q Mrs. Maria Rita Milcznski, you have been asked to appear here today concerning an income tax investigation of Dr. Robert Lawrence Wolf. In connection with this investigation we would like to ask you questions under oath. Please stand and raise your right hand."

Which you complied with.

"Do you, Mrs. Maria Rita Milcznski solemnly swear that the answers you are about to give to the questions asked will be the truth, so help you God?"

And did you answer, "I do"?

A Yes.

Q And now you are stating that these answers were not truthful?

MR. LAWYER: Objection.

THE COURT: I will permit it.

MR. LAWYER: He is talking about the grand jury testimony. The other answers are not --

MR. APPLEMAN: I am referring to the June 15, 1972 testimony.

MR. LAWYER: His question said grand jury testimony. That is not the grand jury testimony.

THE COURT: We know that now.

MR. APPLEMAN: This is before the special agent.

THE COURT: Is it Skolnick?

MR. APPLEMAN: Yes, Morris Skolnick.

THE COURT: What do you want her to say now? If the testimony she gave then was not true; is that it?

MR. APPLEMAN: That is right.

THE COURT: I take it that is the answer, isn't it?

THE WITNESS: It wasn't true.

THE COURT: She says it wasn't true.

Q In other words, your testimony then under oath was not true?

MR. LAWYER: Your Honor, she said it three or four or five times.

THE COURT: All right, I will let the witness answer it.

The answer is yes, isn't it?

THE WITNESS: Can I offer any sort of explanation? I cannot answer --

THE COURT: Isn't the answer to this last question yes?

THE WITNESS: Not an unqualified yes.

THE COURT: All right. She says not an unqualified yes.

Next question.

Q After you received the subpoena from the grand jury and you realized the seriousness of this, did you then tell anyone that your testimony of June 15, 1972 was not true?

A Will you repeat, say the question again?

Q In other words, when did you decide to change your testimony?

A When I received a subpoena to appear before the grand jury I realized at that point that I had to give accurate answers.

Q Did you discuss this with anyone?

A You mean other than anybody in Government?

Q No, in Government or otherwise?

A I went down -- when I went down to appear before the grand jury I first spoke with District Attorney -- I think his name was John Tigue, Jr., and I did say that the testimony at that time was not completely accurate.

Q What did Mr. John Tigue say to you?

A He just said he was going to ask me questions now and would I give truthful answers.

Q Was there any promise of any immunity?

A No promises of any sort were made.

Q Were there any questions posed to you before the grand jury with regard to your testimony of June 15, 1972 before the special agent?

MR. LAWYER: Objection. He has the documents.

THE COURT: The witness can answer it.

Do you remember?

THE WITNESS: If he would repeat the question again --

THE COURT: The question is:

When you testified before the grand jury were you asked any questions about whether your testimony before Skolnick was true or not true?

THE WITNESS: You mean once I was sworn in before the grand jury?

THE COURT: Yes.

THE WITNESS: No.

Q When did you relate this to Mr. Tigue?

THE COURT: Relate what?

Q Relate the fact that your testimony of June 15, 1972 was false?

A The date of the grand jury, whatever date that was.

Q April 11 , 1973?

A That was the day.

Q You didn't speak to Mr. Tigue prior to that time?

A No.

Q Did you speak to Mr. Skolnick prior to that time?

A No.

Q We are again referring to the special agent interview of June 15, 1972.

Was this question asked and was this your answer:

"Q What specific instructions did Dr. Wolf give you with regard to the recording of the fee income?

"A Are you again referring to when patients give checks in full? None."

Naturally, your grand jury testimony is otherwise.

THE COURT: I am afraid I can't allow the question to contain a statement or comment, Mr. Appleman. I am afraid we will have to start over again. Just ask a question.

MR. APPLEMAN: That is what I am looking for, your Honor.

Q From the grand jury:

"Q Was it part of your duties to make entries on the books and records of Dr. Wolf's medical practice?

"A Yes, sir."

Was that the answer?

A Yes.

Q I am a little perturbed with regard to the testimony --

MR. LAWYER: Objection.

Q -- to the grand jury.

MR. LAWYER: I object to a remark like that.

THE COURT: Mr. Appleman, I am afraid I can't permit statements or comments. We have to ask a question, an inquiry, an interrogatory.

Q Before the grand jury:

"Q And you remember back some time around 1966, whether during the course of the Internal Revenue Service audit Dr. Wolf asked you to change some of the sheets in the book?

"A Yes, sir."

Is that the answer you gave Mr. Tigue?

A Yes.

Q In all of the prior questions before the grand jury there was no reference made --

THE COURT: No, no, Mr. Appleman.

MR. LAWYER: Objection.

THE COURT: I cannot permit statements.

Q Was there any reference made to these alleged changes of sheets in the book?

MR. LAWYER: I object to the question. The question is very difficult to understand. Further, your Honor, could she see the sheet or the testimony?

THE COURT: What is the question?

MR. APPLEMAN: In other words, your Honor, the grand jury testimony --

THE COURT: Don't argue about what it is.

What question do you wish the witness to answer or do you want to offer the testimony?

MR. APPLEMAN: I'm sorry.

THE COURT: I am sure the Government concedes that you have got the transcript of her testimony before the grand jury and if you want to offer it we will consider it.

MR. LAWYER: May the record reflect from where he got the grand jury testimony as well as the testimony before Mr. Skolnick?

THE COURT: Yes. I should tell the members of the jury that there is a law passed by Congress which requires the Government at the conclusion of the direct examination of every witness to give the defendant or the defendant's counsel a copy of any statements of the witness in the Government's possession relating to the direct examination of that witness, and in compliance with that law the Government has supplied such material to the defendant here including the testimony of this witness befofe the grand jury.

All right, let's go on.

8 Q Referring to this question and answer which is in the grand jury minutes of April 11, 1973, and I am sorry to be repetitive:

"Q Do you remember back some time in 1966 where during the course of the Internal Revenue Service audit Dr. Wolf asked you to change some of these sheets in the book?"

The answer was: "Yes, sir."

Did you comment to Mr. Tigue pertaining to this item prior to your grand jury appearance?

A Yes.

Q You spoke to Mr. Tigue prior to your grand jury appearance?

A That same day before I appeared before the grand jury I spoke with Mr. Tigue.

Q Was a stenographer present at the time you spoke to him?

A No.

Q Was there a tape recorder?

A I wouldn't know.

MR. LAWYER: Your Honor, may I state that the United States Attorney does not employ tape recordings. There was no tape recorder. I will make that representation.

THE COURT: All right.

Q Were there any notes taken by Mr. Tigue?

A Yes, I saw Mr. Tigue jotting down things.

MR. APPLEMAN: May I have those notes?

MR. LAWYER: I have in my possession no notes. I have his files. Mr. Tigue has left the office.

THE WITNESS: My daughter was present in the office at the time.

MR. APPLEMAN: I object to that.

MR. LAWYER: There are voluminous records in my office.

THE COURT: But you don't have any notes of

Mr. Tigue?

MR. LAWYER: I don't have any notes that I know of.

THE COURT: All right, that is the end of the matter as far as I'm concerned.

Q This is question 89 with regard to your testimony before the special agent on June 15, 1972 referring to a question asked you whether Dr. Wolf was knowledgeable of accounting in Federal income tax matters.

The question at 89 says:

> "What do you mean when you say you would assume so?
>
> "A He liked to follow the stock market. I would assume so. I was always under the impression the accountant handled everything for him. That was my impression. Again, I don't know what took place, but I know he used to come in. I never met him. In other words, I am saying here 'Mr. Edelstein is coming down today.'"

THE COURT: Do you want to know whether that was her testimony?

Q Was that your testimony?

A Yes.

THE COURT: All right, next question.

Q Question 29 before the special agent on June 15, 1972. Will you please state if this was the question and the answer:

"Q Did you make all the entries on these cards?

"A No, as I say, I only make an entry if they did pay cash and he gave it to me on occasions. When I went through the mail and some checks came in he might say 'Charge these checks off.' I just handled what came in. He took care of the bookkeeping. I wouldn't say so under oath."

Was that your testimony on that date?

THE COURT: Was that Mr. Skolnick?

MR. APPLEMAN: Yes.

THE COURT: Do you remember whether this is what you told Skolnick?

THE WITNESS: I only recently received a copy of that transcript and quite frankly in reading it it sounds like a bunch of gibberish to me and I can't even understand several sections of it.

THE COURT: Do you remember whether or not you made that answer?

THE WITNESS: It is there and I say I made the answer because it is written, but I don't make any sense out of the answer.

THE COURT: But you don't remember it actually? You are relying on the fact that it is typed out?

THE WITNESS: That is right.

THE COURT: All right, that is as much as she can say.

Q Then testimony before Special Agent Skolnick on June 15, 1972, question 36:

"Q Were the checks deposited in a bank account?

"A A few times I went to the bank to make deposits and they were deposited in the bank account. I did not go all the time. I wasn't responsible for all these things as a general thing, but I did go to the bank on occasions they were deposited."

Was that your answer on that date?

A Yes.

Q Question 54 again June 15, 1972:

"Q I understand from what you are telling me that Dr. Wolf did not tell you about the fee payments he received from the patients, he would record them himself?

"A Right."

Was that your answer on that date?

A Yes.

Q 59, same testimony:

"Q Who computed the gross receipts received from the doctor's patients?

"A I would assume he did. Either he did or his accountant. I wouldn't know that either."

Was that your answer?

A Yes.

Q These questions were asked you at the end of this appearance before the special agent, were they not:

"Q Mrs. Milcznski, have I or has any other Federal agent threatened or intimidated you in any manner?"

Your answer to that was "No."

Was that your answer?

A Yes.

Q 98:

"Have I or has any other Federal agent offered you any reward or promises of reward or immunity for this statement?"

Your answer was: "No."

Was that your answer?

A Yes.

Q 99:

"Have you given the statement freely and voluntarily?"

Your answer was: "Yes."

Was that your answer?

A Yes.

Q Can you please tell the Court at approximately what time the doctorbegan asking you to cash checks? Was it in 1963 when you started or was it in 1964 or was it in 1969?

A It was after he was, like, separated in 1967.

Q It was after he and his wife separated in 1967?

A Generally.

Q Generally was after the time --

A There could be a possibility of one or two times prior to that time, but it stands in my mind after that time because it was done with such consistency.

Q In other words, at the time of the doctor's marital difficulties he began or he requested you to cash checks; is that correct?

A Yes.

Q While you were in the office did a process server ever appear?

A I really can't recall.

Q After the separation was the doctor out of his office a great bit of time?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Question 55 before the special agent:

"Q During the period" -- I think I am repeating, but reasonably -- "1966 until the termination of your employment in 1969 did anyone else assist you or the doctor in the reporting of the fee income?

"A Actually I wouldn't really know. His wife used to help at times before they separated. Whether she helped in that capacity, I don't know."

Was that your answer at that time?

A At that time, yes, that was my answer.

9 Q Prior to the separation did the wife assist you or did the doctor?

A Dr. Wolf's wife, she would occasionally come into the office. As far as assisting in any work in the office, no, but there were times when they were expecting the accountant during income tax time and she did come into the office and I had already gone from the office at that point.

Q Did you ever see the doctor's wife after the separation in his office?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Do you know if subsequent to the time of separation the doctor's wife assisted him in the preparation of any records?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q For the years 1966 through 1969 when you did not report the income earned from the doctor, did you file amended returns, did you yourself file amended returns for these years?

A No.

Q Do you know that you owe a tax for the income earned from the doctor for these years?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q What was the doctor's major activities during this period of time?

MR. LAWYER: Objection.

MR. APPLEMAN: She already testified to that, your Honor.

MR. LAWYER: Why ask her again?

THE COURT: During what period?

MR. APPLEMAN: 1966 to 1969, when she was working for him.

THE COURT: Can you answer that?

THE WITNESS: What did you ask me?

MR. APPLEMAN: Can the question be repeated?

(Record read.)

MR. LAWYER: I object to the question.

THE COURT: I suppose it was in the field of medicine.

THE WITNESS: I think yes.

Q Doing what, practicing medicine, researching, teaching, attending Mount Sinai, what was the major thrust of his practice?

A You just said it.

Q Which one was it? What was the major thrust? Was the major thrust research?

A When I first started to work for Dr. Wolf I would say yes, he was deeply involved in research and I would say his involvement continued, but as his practice grew naturally there was less time spent at the hospital than there was at his practice. He had a very small practice when I went there so consequently more time was spent in research. Later on I would say it decreased, but I wouldn't say his interest in research decreased, if that is the answer you want.

THE COURT: All right.

Q Did he also teach at Mount Sinai?

A Yes, he taught at Mount Sinai.

Q Did this take up a great deal of his time?

A I don't know how much time it took up.

Q You state that you typed research papers for the doctor. Were there many papers typed by you for the doctor with regard to his research activities?

MR. LAWYER: When?

Q During the period 1966 to 1969?

A I could not give you a specific number of papers. I can just tell you in general from the year 1961 until 1969 Iwould say I typed up perhaps a hundred papers, but when they were, what specific times, I could not tell you.

Q With regard to the Swiss bank account, when did you first learn of the fact that the doctor had a Swiss bank account?

A Such time as I was writing letters to them.

Q Which time was that, approximately?

A I would say some time in 1968.

Q Could it have been in 1967?

A Could it have been?

Q Yes.

A I don't think so. I think it was -- I can't answer with any degree of accuracy.

Q What was that?

A I said I can't answer with any degree of accuracy on that particular question.

Q Was the bank account opened at approximately the time his marital difficulties began?

A It would be after.

MR. LAWYER: I would object. At the time they began she may have no idea.

THE COURT: The marital difficulties, as I have emphasized, have nothing whatever to do with any issue here on trial.

Can we go on and avoid that?

Q Did you ever tell anyone in Government service about not reporting their income?

A No.

Q Income that you received from Dr. Wolf?

A No.

Q Did you report your income from Mount Sinai Hospital?

A Yes, definitely, yes.

Q Did you receive a W-2 from Mount Sinai Hospital?

A Yes.

Q Did you ever meet the accountant, Mr. Edelstein?

A I met Mr. Edelstein very briefly. There was one point Dr. Wolf had to bring his returns to Mr. Edelstein and since he was in the Empire State Building there was no place to park. Dr. Wolf said, "I'm going to go down there. You run up with it and I'll circle the block," and that is my meeting with Mr. Edelstein.

Q At that time did you ask any questions of Mr. Edelstein?

A No, I just handed him the sealed envelope and left.

Q At the time you worked for Dr. Wolf did you consider yourself an independent contractor?

MR. LAWYER: Objection.

THE COURT: I will permit it.

A Did I --

Q At the time you worked for Dr. Wolf during the hours you worked for Dr. Wolf did you consider yourself an independent contractor?

A No.

Q Did you consider yourself an employee?

A Yes.

Q Now, you made the headings for the work sheets at times for the doctor; is that right?

A Yes, he would tell me what to write down and I would write it down, yes.

Q When you saw the item "Stenographic Services, Independent Contractor," did you question the doctor about it?

A I think there were some things you don't have to question.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: All right, Mr. Lawyer.

REDIRECT EXAMINATION

XX BY MR. LAWYER:

Q Mrs. Milcznski, what income is there you didn't report?

A Dr. Wolf paid me for 20 hours a week that I worked for him. The bulk of my money came from the Mount Sinai Hospital. As a matter of fact, when I worked longer than that time the Mount Sinai Hospital was billed for it. It was Dr. Wolf who told me not to report the income.

MR. APPLEMAN: I object to that.

THE COURT: I will permit it.

Go ahead.

Q What was the conversation. What did Dr. Wolf say?

A Dr. Wolf told me not to report the income, it just involved a lot of paper work and for the nominal amount involved it wasn't worth it.

To say something on my part, at this particular time I didn't think it made a particular difference. My husband was sick a good part of the time and --

THE COURT: Next question.

Q Did that ever come up between you and any Government official or the Internal Revenue Service?

A No.

Q No one ever asked you about it?

A No.

Q What was the period when Dr. Wolf's research at the hospital slowed down greatly; about what year, approximately?

A I couldn't answer that.

Q Did he spend more time in the office for private patients after 1966 or before 1966?

A Would you repeat that?

Q Yes.

Did he spend more time in the office with private patients before 1966 or after 1966?

A After 1966.

Q So most of his research was in the earlier years?

A Yes.

Q You were asked the question by Mr. Appleman referring to your testimony before Mr. Skolnick in which you remarked "When you went through the mail."

What did you mean by that, going through the mail? Did you ever open that mail?

A I never opened his mail and I could only say, as I told Mr. Appleman, reading that testimony sounds like so much gibberish. I think it is just a question of words. I don't even know what I was saying. I just wanted to get away from there and have nothing to do with it.

10 Q How many times did you see Mr. Edelstein in Dr. Wolf's office? How many times did you personally see him with your own eyes?

A I think it was one time when I was leaving the office Mr. Edelstein was coming into the office.

Q Just one time?

A Yes.

MR. LAWYER: Your Honor, I have no further questions.

THE COURT: Any recross?

MR. APPLEMAN: Yes.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. APPLEMAN:

Q You said that at the testimony of June 15, 1972 you were just a bundle of nerves, you don't recall what went on.

Were you a bundle of nerves before the grand jury?

MR. LAWYER: This is not proper recross.

THE COURT: I will permit it. I don't know whether she used the expression "bundle of nerves." I think you have to be careful in restating the testimony. Can't we avoid that? I can't remember exactly what she said.

What is the question?

Q Were you a bundle of nerves before the grand jury?

A I was nervous, yes.

Q Do you recall your testimony?

A I would not say I was as nervous before the grand jury as I was before Mr. Skolnick because when I was going before the grand jury I knew I was going to answer accurately to everything they said and as far as being before Mr. Skolnick, I could only think of one thing: to get away from there without saying anything that would be incriminating to Dr. Wolf.

Q As to you or Dr. Wolf?

A As to Dr. Wolf.

THE COURT: Any further questions?

MR. LAWYER: No, your Honor, that is all.

THE COURT: Thank you, Mrs. Milcznski, you may be excused.

(Witness excused.)

THE COURT: Now, shall we take Mr. Edelstein?

MR. LAWYER: Yes, sir. I believe he was on cross examination at the time.

THE COURT: Yes.

- -

cs72

BENJAMIN D. EDELSTEIN, having been previously duly sworn, testified further as follows:

CROSS EXAMINATION (Continued)

BY MR. APPLEMAN:

THE CLERK: Mr. Edelstein, you are still under oath.

THE WITNESS: Thank you.

THE COURT: All right, Mr. Appleman, let's finish the cross-examination now of Mr. Edelstein.

Q Mr. Edelstein, do you have the papers I requested?

A Yes. They are actually two together, but I think you have a copy of this.

MR. APPLEMAN: Please mark these for identification.

(Defendant's Exhibit E was marked for identification.)

xx THE WITNESS: Excuse me a minute. Can I have a photostat of that?

MR. APPLEMAN: I don't know.

He wants a photostat of this, your Honor.

THE COURT: All right, we will make one upstairs.

THE WITNESS: Thank you.

THE COURT: Don't worry.

Q I show you Defendant's Exhibit E for identification. Can you please look at it and state if these were the statements received from Dr. Wolf by your office?

A Yes, they are, sir.

MR. APPLEMAN: I offer them in evidence.

THE COURT: Show them to Mr. Lawyer.

MR. LAWYER: May I inquire whether one or both pages are being offered?

MR. APPLEMAN: Both pages.

MR. LAWYER: I have no objection, but I will point out that the second page is a Xerox of Government's Exhibit 15 already in evidence.

THE COURT: All right, without objection Defendant's Exhibit E is received.

(Defendant's Exhibit E was received in evidence.)

xx Q Mr. Edelstein, referring to the second page of Defendant's Exhibit E in evidence, which is also Government's Exhibit 15 in evidence, the last paragraph states as follows:

"I am positive that no more tax is due to the Government for any of these years. I still do not understand the levy of $243.50 which the Government obtained from my salary from Mount Sinai in 1966. Your previous explanation that this was an error on the part of the Government is understandable if I receive this money back, which I should in the near future."

This statement from Dr. Wolf to you refers to what type of levy by the Government?

A Don't they indicate what it is?

Q It only says here:

"I still don't understand the levy of $243.50."

A The amount is there.

It says "I am positive that no more tax is due to the Government for any of these years. I still do not understand the levy of $243.50 which the Government obtained from my salary from Mount Sinai in 1966. Your previous explanation that this was an error on the part of the Government is understandable if I receive this money back, which I should do in the near future."

Now, according to this the levy was made and a balance due the Government of $243.50. It wasn't paid so they made a levy.

Q What caused this amount to be due to the United States Government?

A Offhand I don't remember what it was.

Q When you prepared the return did Dr. Wolf prepare a check for the amount that you deemed due and owing the Government?

A What does the return show for 1966?

Q For 1966 the income tax return shows that there was a balance due of $866.67.

A Well, I assume he paid it.

Q Would there be any reason for there to be an additional assessment in that return of $243.50?

A I can't tell now. I don't remember what it was.

Q Did you state, as Dr. Wolf said in his letter, that it was due to an error on the part of the Government?

A I probably did, if that is what he said. I can't remember exactly what the circumstances were.

Q Mr. Edelstein, just to be a little repetitive, and I apologize for that, you have been a CPA since 1947; is that correct?

A That is right.

Q Dr. Wolf did retain you for tax advice?

A That is right.

Q During the period 1966 to 1969, was there ever a time when Dr. Wolf did not follow your tax advice?

MR. LAWYER: I will object.

THE COURT: I will permit him to answer, if he can.

Q In other words, did you ever give Dr. Wolf advice which he didn't follow or which he refused to follow?

A I don't remember anything like that.

Q You don't remember anything like that?

A No.

Q In other words, any time you told him something he did it?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q During the year while you were retained by Dr. Wolf did you receive numerous correspondence pertaining to tax matters?

A I did. Well, I received them from him. He got them first. It could have been any type of correspondence, City, State or Federal.

Q Which he would usually forward to you?

A That is right.

Q Would he give you any instructions as to what to do with it?

A I don't remember anything like that.

Q I wish to show you a letter dated May 23, 1968 which I wish to have marked Defendant's Exhibit F for identification.

XX (Defendant's Exhibit F was marked for identification.)

Q Would you please look at this and tell us if this is the usual type of correspondence received from Dr. Wolf?

A Yes, in reference to the City, yes.

Q Is that right?

A That is right.

11 Q In reference to the City and State tax matters?

A That is right.

MR. APPLEMAN: I would like to offer this into evidence.

MR. LAWYER: No objection.

THE COURT: Mark it.

xx (Defendant's Exhibit F received in evidence.)

Q In other words, all other correspondence would be similar to this one which I wish to relate?

A It seems to in --

Q "Enclosed are commencial rent or occupancy claim forms which I just received. Kindly take care of them as you have in the past."

A That is right.

Q In other words, he did rely on you to take care of these items?

A Oh, yes, City and State.

Q Did he rely on you to prepare the Federal tax returns?

A What?

Q Did he rely on you to prepare the Federal income return?

A I don't --

Q You keep stating "Yes, he did rely on me for City and State."

A Yes, he asked me to prepare the return, that is right.

Q Did he rely on you to prepare the Federal income tax return?

A If he gave me the return, I assume he would rely on me.

Q What records would usually be necessary to properly prepare a return of a doctor?

A You are talking about the Federal return?

Q Federal return, that is all I am referring to.

A We went over this before. We have copies -- you have copies of the work sheets that he sent me. We went over that year. We went over it the other day, Tuesday. That is how I prepared the returns, from those documents.

Q Supposing I am a new client and I am a doctor. What records would you require to properly prepare my return?

A It all depends on the circumstances, what records you have.

Q What records --

A I would refer, I would need personal records of the particular doctor, whoever it is, to give me the information for me to prepare their return.

Q In other words, what you prefer is for the doctor or whoever your client is to do the bookkeeping and you make the --

A Excuse me. Every case is different and you can't describe them the same way. Some people I might do all the bookkeeping, others I do not, and I prepare the return from the information they give me. You can't go ahead and make a general statement on that.

Q These people relying on your tax advice would require -- what would you require to properly prepare an income tax return?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q I wish to show you Defendant's Exhibit A in evidence in your handwriting on 4-column accounting paper which relates to stock transactions,bank deposits, savings ban deposits, summary of disbursements.

A Yes.

Q Would you say that all that information would be necessary to properly prepare a return for the doctor?

A That is right.

Q Did you obtain these records from Dr. Wolf?

A I obtained the records. We are repeating this.

Q Please answer the question: did you obtain the records from Dr. Wolf?

A I obtained the records, what he gave me. As you have in your records, that is it.

Q Even though you requested these records?

A That is right. It does not mean necessarily that he gave me. All he gave me was the work sheets and from that I prepared the returns.

Q However, you, prior to obtaining these work sheets, believed that those items were necessary to properly prepare a return; is that correct, sir?

A I didn't say necessary. I asked for those returns -- for that information.

Q If they weren't necessary, why would you ask for them?

A Well, I would like to see them, but they weren't presented, so I made out the return from the information he submitted on these work sheets. Every case is different, as I mentioned before.

Q Did you request the specific information from the doctor?

A If it is on there I requested it, right.

Q And when you requested it did the doctor offer any objections?

A I don't remember.

Q The doctor followed all your other advice pertaining to tax matters?

A I don't recall any.

Q Is that why he didn't follow this?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Upon not receiving these records you still prepared the return based on the work sheets you received?

A That is right.

Q Are you licensed to practice before the United States Treasury Department?

A Well, what do you mean?

Q It is automatic?

A It is automatic, I think.

Q You are a CPA and you are licensed to practice?

A I am a CPA. I repeated that maybe a half a dozen times.

Q Are you aware of United States Treasury Department Circular 230 with regard to practice before the Internal Revenue Service?

A No, I don't recall that thing. What is it?

MR. APPLEMAN: I wish to present this for identification as Defendant's Exhibit G, which is Government Circular 230, an official document of the United States Government.

xx (Defendant's Exhibit G marked for identification.)

MR. LAWYER: I object unless I first see the document.

THE COURT: All right, show it to him.

MR. LAWYER: All right, I will withdraw the objection.

Q I wish to call your attention to (b) which has the heading "Duties and Restrictions Relating to Practice Before the Internal Revenue Service," and I request that you read to the jury Item 10.22.

MR. LAWYER: I object.

THE COURT: It is not in evidence. The objection has to be sustained.

MR. APPLEMAN: I wish to place this in evidence, your Honor.

MR. LAWYER: I object.

MR. APPLEMAN: This is a government document.

THE COURT: That doesn't mean anything. I will take it for what it is worth, all right. Objection overruled. Mark it.

xx (Defendant's Exhibit G received in evidence.)

THE COURT: Do you want to read part of it to the jury?

MR. APPLEMAN: Yes.

THE COURT: All right, go ahead.

(Mr. Appleman read from Defendant's Exhibit G to the jury.)

THE COURT: All right.

Q Now, sir, based on that statement and based on the fact that you requested the stock transactions, the bank deposits, the savings bank deposits and the summary of disbursements from Dr. Wolf which you did not receive, would you deem this as using due diligence in the preparation of a return?

A If you complete the question, I'd say yes. He gave me those work sheets. That is exercising due diligence on preparing the return. That is it, that is exercising due diligence in preparing the return. He submits the information to me on his work sheets. That is all that is necessary for me to prepare a return.

Q In other words, if anybody comes to you to prepare a return with the figures on a work sheet you would prepare that return?

A That is right.

Q Would there ever come a time, sir, when you would refuse to prepare a return?

A I don't remember any. It all depends on the circumstances.

Q Did you ever refuse to prepare a return?

A I think I did, yes.

12 Q When did that occur?

A I don't remember that.

MR. LAWYER: Objection.

THE COURT: He says he doesn't remember.

Q When you filed the doctor's returns did you believe them to be proper and accurate?

A Did I what?

Q Did you believe the returns that you prepared for Dr. Wolf to be proper and accurate?

A Based on his own work sheets he submitted, yes.

Q And you would not ask any other questions?

A No.

Q However, you would request information as to possibly increasing the expenses or something to that effect?

A If there was anything I discussed it with him.

Q How much did you charge the doctor for the preparation of these returns?

A Well, it varied from year toyear. I think it was from $200 to $350. Offhand, I don't recall.

Q When did you charge $200?

A The first time I think I did it. I'm not sure that is the amount, but I think so.

Q What did you charge the second time?

A I can't remember.

Q Would you be surprised if I told you that you charged him $350?

A I'm not surprised at anything you say. I am just trying to tell you I don't recall.

Q I wish to call your attention to testimony which is labeled SA2 with regard to testimony on April 13, 1973, before the grand jury.

THE COURT: That is this witness?

MR. APPLEMAN: Yes, your Honor.

Q "Q On Grand Jury Exhibit 5 there was no gross receipts figure.

"A As I mentioned before, I never saw the bank statement when I prepared the return. I just followed this one sheet."

Was that your answer?

A That is right.

Q "Q Whatother information would he give you?

Would he give you what are called Form 1099s?

"A If he had one he would give it to me, yes."

Was that your answer?

A That is right.

Q So therefore when the doctor submitted his papers pertaining to the preparation of his returns he would submit the work sheets; correct?

A That is right.

Q He would submit the W-2s for Mount Sinai; correct?

A That is right.

Q He would submit the 1099s?

A Right.

THE COURT: What is a 1099?

MR. APPLEMAN: 1099s are information returns prepared by any person or company who pays an independent contractor the amount of $600 or more and this is an information return submitted to the government and to the individual concerned.

THE COURT: All right.

Q When the doctor submitted these forms to you did you request any information?

A I don't remember whether I did. I based my returns on the work sheets and on any other information that he submitted like the 1099s or the W-2s if he had any. I have no way of telling whether they had 1099s or W-2s, but if he submitted them naturally I would have them, so we go back to the same thing. That is what I base my tax sheets on, on the work sheets that he submitted.

Q That is all, just the work sheets he submitted?

A That is right.

Q No W-2s?

A Well, I wouldn't -- if he didn't have them, if he didn't submit them he didn't have them, that is all.

Q Did you request it?

A I would ask him that.

Q Would he submit them to you when you requested the W-2s?

A I don't remember. If he had them he would submit them. If he didn't --

Q If he had them he would submit them?

After he submitted them would you query as to what this item represents?

A I don't have to. I can tell what the W-2s and 1099 form represents.

Q So therefore you did not ask him any questions pertaining to the 1099s or the W-2s?

A I can't remember that. I can't say.

Q Is it possible, sir, that the doctor did not include those items which were submitted to you on 1099s on his work paper?

A That the doctor did not?

Q Did not include those items on the 1099s which were -- in other words, those items which he received and gave to you on the 1099 on his work papers?

A They were not included. I assume they were not included.

Q You assume they were not included?

A That is right.

Q So, in other words, when you prepared the doctor's return you would obtain the gross income figure from the work sheet and add thereon the figures from the 1099?

A Right. Now, there might have been in those work sheets, he might -- I don't know. I don't recall. There might have been a memorandum there that he included it or he didn't include it. If he didn't, we use them separately. If he did --

Q If you recall, when we started this series of questions, I asked you if you asked any questions pertaining --

A I don't remember what questions I asked him.

MR. APPLEMAN: Can you please read the previous reply to the question pertaining to the W-2s, Mr. Reporter?

(Record read.)

MR. APPLEMAN: I believe there was a question that I asked --

THE COURT: We can't read all the questions asked of the witness. You may be right, but I can't remember.

MR. APPLEMAN: I believe there was a response which stated the doctor would submit W-2s and 1099s.

THE COURT: Yes, I believe that is correct.

Q What questions would you normally ask someone coming to your office with W2s, 1099s, and the work sheets?

A It depends on the circumstances. I would have to be here two weeks to give you that information. Every case is different. I don't know.

Q What questions did you ask the doctor?

A I mentioned that before. He gave me the work sheets. I probably asked him whether he had any 1099s or W-2s, and that is it, and any questions subsequent to that that I needed any more information, I would call him.

Q But the doctor would in all cases give you the W-2s and 1099s?

A If he had them he probably would. I don't know.

I can't answer that.

Q If these 1099s were received from IT & T and like companies you would add that to the income which the doctor showed on his work sheets; is that correct, sir?

A I can't tell that. It all depends on what happened that particular year and what the circumstances were. If the 1099 was IT & T, if I received it, it probably wouldn't be on the work sheets.

Q You were retained by Dr. Wolf initially beginning with the preparation of his 1966 return; is that right?

A That is right, sir.

MR. APPLEMAN: Please mark this.

xx (Defendant's Exhibit H marked for identification.)

13 Q I wish to show you Defendant's Exhibit H marked for identification, which is a letter dated May 31, 1967, addressed to Mr. Ben Edelstein. Do you remember receiving that, sir?

A Well, if that is it, then I must have received it.

Q Do you remember receiving information of that type, sir?

A Well, the letter states so, then I received it.

MR. APPLEMAN: I wish to present this for evidence.

THE COURT: All right.

A But I did not prepare the 1965 return.

MR. LAWYER: I object. It refers to the 1965 return, your Honor.

THE COURT: All right, let me see it.

Overruled. Mark it.

xx (Defendant's Exhibit H received in evidence.)

Q Will you please tell the jury in essence what this letter states?

THE COURT: No.

MR. LAWYER: Objection.

THE COURT: Certainly not. You can read that to the jury if you want to.

(Mr. Appleman read from Defendant's Exhibit H to the jury.)

Q Mr. Edelstein, did you prepare the 1965 return?

A I did not.

Q Referring to Government's Exhibit 15, with regard to the query posed to you by Dr. Wolf regarding a levy which was made on his salary in the amount of $243.50, I wish to show you an Internal Revenue Service document Form 4034, addressed to Robert Lawrence Wolf.

MR. APPLEMAN: I ask that this be marked as Defendant's Exhibit I.

xx (Defendant's Exhibit I marked for identification.)

Q Will you please look at this and tell us if you ever saw this?

A I don't remember.

Q Does this relate to the item with regard to Government's Exhibit 15, to the levy made on the doctor's salary for $243.50 in 1966?

A From what I see it probably does.

Q It does?

MR. LAWYER: Objection. He didn't say it does.

THE WITNESS: Let me see the letter. This is an assessment made by the government for $236.25. There is apossibility when they made the levy there was additional interest of $6 or $7.

MR. LAWYER: I move that that be stricken.

THE COURT: Let's go on.

Q Does that government Form 4084 relate the reason for the additional assessment?

A It says here Item J. Item J, "Tax taken from the wrong column or wrong line of tax" --

MR. LAWYER: I don't think the document is in evidence.

THE COURT: No, it isn't, so he shouldn't read from it.

Q Will you look at the 1966 return which is Government's Exhibit 1 in evidence? Are there any corrections made to that return?

A Well, there was some corrections from what I see. It might have been erasures. I couldn't tell. I don't know.

Q I wish to point your attention to the fact that you listed under Item 12, which is Tax Computation, that the tax due was $2221.30.

A That is right.

Q Can you please relate what the purple figure is, the government's correction was?

A $2452.28.

Q Therefore there was an error?

A I don't know. I can't tell that. I would have to check it. I don't know. That is what they had, yes.

Q But yet you related to the doctor in accordance with Government's Exhibit 15 that there was an error on the part of the government, it was not your error?

A I don't know what the final outcome was.

THE COURT: We can't get the record if both of you are talking at the same time.

What is it you want to say, Mr. Edelstein?

THE WITNESS: I can't tell. I don't know what happened, was the final conclusion of this particular matter.

THE COURT: All right, next question.

Q I wish to call your attention in your testimony of April 13, 1973, on page SA-6, where the question asked was:

"And is there any explanation of why there is such a difference between $50,000 that he lists?

"A I couldn't tell you. I assume they were moneys he handled in his stock transactions."

Was that your answer, sir?

A You say April -- when was that?

Q April 13, 1973.

A Before the grand jury?

Q I think it was before the grand jury.

A What year is that?

Q April 13.

A I'm talking about the year in question.

Q 1967.

A All right. If there is any question as far as the difference in deposits or receipts as noted by the work sheets, I always discussed that with Dr. Wolf and he gave me the explanation in writing what it is.

Q Let's go back to testimony, sir. The question and answer before the grand jury:

"Q And is there an explanation of why there is such a difference between $50,000 that he lists?

"A I couldn't tell you. I assume there were moneys he handled in his stock transactions."

Was that your answer, sir?

A If it says so, yes.

Q Mr. Edelstein, does that answer comply with the requirements of the Government Circular No. 230 as to diligence and as to accuracy?

MR. LAWYER: Objection.

THE COURT: Of course the objection is sustained. It is a whole improper question.

Q Next question:

"Q But he didn't give you an explanation as far as you can remember?

"A No. He did say -- he said, 'Here's the information.'"

Was that your answer, sir?

A If it says so, yes.

Q Is it now your testimony that Dr. Wolf did relate to you an explanation as to the difference between the $50,000 shown to you as deposits and the amount reported or reflected on his return?

A -- He related to me in writing if there was any difference, yes. I wouldn't accept any other explanation.

Q During the course of your representation of Dr. Wolf were there any questions pertaining to Dr. Wulf's stock transactions?

A I don't remember.

Q In other words, did they request his stock brokerage accounts?

A -- Did they what?

Q Did they request stock brokerage accounts of Dr. Wulf, that is, the agents, the Revenue Agents and/or Special Agents?

A Yes.

Q Did you give them those records?

A Yes, I did.

Q -- Did the Special Agent and/or the Revenue Agent request the doctor's bank accounts?

A They did, yes.

Q Did you give them to the Special Agents?

A I asked Dr. Wolf and he gave me whatever he had to give me.

Q Mr. Edelstein, when was the first time you met Special Agent Morris Skolnick?

A I don't remember. Mr. Skolnick will give you that information better than I can.

Q Who appeared first with regard to the audit of Dr. Wolf's income tax return for 1966?

A What do you mean, "who appeared first"?

14 Q Did Special Agent Skolnick immediately appear with regard to this investigation?

A I don't -- we had two agents. Mr. McGuire was the first one. What year he did, I don't recall. And then Mr. Skolnick came into the picture.

Q Who is Mr. McGuire?

A He is an Internal Revenue Agent.

Q Who is Mr. Skolnick?

A He is an agent and he is from the Fraud Squad.

Q From the Fraud Squad?

A That is right.

Q What is the difference between Mr. McGuire's position and Mr. Skolnick's position in the Internal Revenue Service?

A Why don't you ask them?

Q Is there any difference between the function of Mr. McGuire and/or Mr. Skolnick with regard to the doctor's audit?

MR. LAWYER: Objection.

THE COURT: I will permit it if he knows.

Do you know?

THE WITNESS: I have an idea what the difference is. They only call in Mr. Skolnick or his type of individual, the type of work, when there is a basis of some sort of fraud involved.

Q But did Mr. Skolnick appear initially?

A The first time, before Mr. McGuire?

Q Right.

A No.

Q So, therefore, Mr. McGuire first appeared, a Revenue Agent?

A That is right.

Q How many times did you see Mr. McGuire?

A I don't remember how many times.

Q Did you see Mr. McGuire more than once?

A I don't recall.

THE COURT: We will have to stop here.

Mr. Foreman, ladies and gentlemen, we will excuse you now for luncheon recess. We will have to take a little longer for lunch today and come back at 2.15.

(Luncheon recess.)

cp23

## AFTERNOON SESSION

2.15 P.M.

(Jury present.)

BENJAMIN D. EDELSTEIN, resumed.

CROSS EXAMINATION CONTINUED

BY MR. APPLEMAN:

Q Mr. Edelstein, I refer you to Defendant's Exhibit E in evidence which you stated were statements signed by the doctor at or about the time the tax returns were prepared. Can you please look at the top sheet which says "Income Tax Information" and tell us the date with regard thereto?

A The date when he signed?

Q That is right.

A February 24, 1970.

Q On February 24, 1970, the doctor signed that statement with regard to what year's information?

A 1966, 1967, 1968 and 1969.

Q Therefore, this statement was not signed simultaneously with the returns when they were prepared; is that correct?

A No, it couldn't be.

Q Can you please state the notations that the doctor placed on that form with regard to your sales figure for 1966, 1967, 1968 and 1969?

A You mean read the amounts?

Q Yes, read the amounts and the statement underneath.

A 1966, $30,116.42; 1967, $29,212.41; 1968, $31,550.01; 1969, $30,971.17.

"Above does not include W-2 or 1099 issued to me."

MR. APPLEMAN: Your Honor, I understand that the rear juror could not hear that.

THE COURT: Mr. Reporter, did you get it?

THE COURT REPORTER: Yes, sir, your Honor.

(Record read.)

THE COURT: Your expression used the expression "sales figures." Is that the word that you --

MR. APPLEMAN: That is correct, sales, and I think it is used the same as you would use income, but sales is placed on that copy.

THE COURT: It sounds rather strange to me, Mr. Edelstein. What does it mean?

THE WITNESS: Well, they use that on a tax return. Actually, sales and gross income would be the same thing. I can change it.

THE COURT: It means gross income, is that it?

THE WITNESS: Yes. Do you want me to change it? I'll change it.

THE COURT: No, no, certainly not.

Q Mr. Edelstein, I am going to show you Government's Exhibits 1, 2, 3 and 4 in evidence which are the 1966, 1967, 1968 and 1969 income tax returns of Dr. Robert L. Wolf. Can you please state the income that is reported on the return as it is in comparison to the statement on Defendant's Exhibit E in evidence?

A 1966, the gross income --

THE COURT: Let's take them one at a time. What have you got in front of the witness now?

MR. APPELMAN: 1966.

A Gross income was $30,116.42. That is similiar to the amount on this form.

Q I am now showing you the 1967 return, Government's Exhibit 2 in evidence.

A That is $29,212.41. That is the same as that form.

Q I am now showing the witness Government's Exhibit 3, the 1968 income tax return of Dr. Robert L. Wolf. What does that show?

A 1968, $31,550.01.

Q Is that the same?

A Similar to that, yes.

Q I now show the witness Government's Exhibit 4 in evidence, the 1969 return of Dr. Robert L. Wolf.

A $30,971.17, similar to the amount indicated on this other form.

THE COURT: What is the other form to which you refer?

MR. APPLEMAN: Defendant's Exhibit E in evidence.

THE COURT: All right.

Q None of these returns reflect the 1099s which were not included in the above sales as per Defendant's Exhibit E; is that correct, sir?

A That is what it shows.

Q Mr. Edelstein, I have before me a memorandum of interview dated April 8, 1971, wherein you were visited by Special Agents Morris Skolnick and Thomas J. La Greca.

A Yes.

Q Certain questions were asked and then, and I quote from this document:

"Special Agent Skolnick asked Mr. Edelstein to read a document which he handed to him."

MR. LAWYER: I object.

THE COURT: Yes, there is no foundation laid for questioning about this paper. What is it?

Q Mr. Edelstein, were you interviewed by Special

Agent Skolnick and Special Agent Thomas J. La Greca?

A Yes.

Q Did this interview take place on or about April 8, 1971?

A I don't know when it took place.

Q Where did they visit you?

A At my office.

Q Where is your office? Where is it located?

A 350 Fifth Avenue.

Q New York, New York, Room 5622?

A That is rigth.

MR. APPLEMAN: I wish to submit this as Defendant's Exhibit J for identification.

THE COURT: All right.

xx (Defendant's Exhibit J marked for identification.)

15 Q Will you please read this memorandum of interview and see if it refreshes your recollection as to what occurred on that day?

MR. LAWYER: Objection.

THE COURT: Yes, of course. Ask him what happened. You haven't asked him what happened. It may be eventually possible to read it, but first you have to ask what they say. If he can't remember, then of course it is proper to show it to him.

Q What occurred on that date?

A We discussed the matter. What we discussed I wouldn't -- I couldn't remember.

THE COURT: All right, now ask him a question and then if he can't answer it, then show him the document.

Q Do you remember if at any time one of these Special Agents handed a document to you?

A I don'tremember.

THE COURT: All right, now you can show it to him and ask him to refresh his recollection.

A What is it you want to know?

Q Did Special Agent Skolnick --

THE COURT: Look at any of the document and see if, having looked at the document, it refreshes your recollection so that you can put it aside and now testify to what happened.

THE WITNESS: I'm sorry.

THE COURT: Just read it to yourself.

(Mr. Fruchtman, who was present at the beginning of the afternoon session, left the courtroom at this point.)

A Yes, I read it.

Q Does that refresh your recollection, sir?

THE COURT: Can you put it down now and answer the question as to whether they showed you a document?

THE WITNESS: I don't remember. I can't tell.

THE COURT: All right, it doesn't refresh his recollection.

Q Do you remember the dissertion with regard to that date?

A You mean whether they were there or not?

A Yes, they were there. What date, I don't remember.

Q Pardon me?

A I don't know what the date was, but they were there.

Q They were there?

A They were in my office at a certain time, yes.

Q Did they ask you any questions?

A They did, yes.

Q Did they advise you about your rights under the Fifth Amendment to the Constitution?

A Me, personally?

Q Yes.

A No.

Q They did not advise you?

A I don't know why they would advise me.

THE COURT: Just answer the question. Yousay no?

THE WITNESS: No. I don't remember.

THE COURT: Next question.

Q Do you believe they advised you as to your rights under the Fifth Amendment with regard to representation of Dr. Wolf?

A I don't remember.

Q Mr. Edelstein, do you remember appearing before the grand jury?

A I do, yes.

Q Did that occur on or about April 13, 1973?

A I assume that is the date.

Q Do you remember this question being asked of you:

"I would also like to advise you this grand jury is investigating possible violations of Section 7201 and Section 7206. Those sections, as you probably well know, relate to all statements on income tax returns and possible income tax evasion.

"Do you understand that?"

The answer was "Yes."

Do you remember that question?

A If I said it, I did, yes.

Q Do you know as to what crimes Section 7206 relates? Code Section 7206 refers to what crime; do you know?

A I don't know.

Q Then your answer to a question here is a misstatement?

THE COURT: No, I won't permit that question. You can make an argument to the jury, of course.

Q I wish to read Code Section 7206 to you.

THE COURT: To the witness?

MR. APPLEMAN: To the witness.

THE COURT: All right.

Q "Fraud. 7206(2) Fraud and false Statements.

"Any person who wilfulled aids or assists in or procures, counsels or advises the preparation or presentation under or in connection with any matter arising under Internal Revenue laws of a return, affidavit, claim or other document which is fraudulent or is false as to any material matter whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document shall be guilty of a felony and upon conviction thereof shall be fined" --

MR. LAWYER: He is going to read the penal part of it which has nothing to do with the substance. It is totally unnecessary.

THE COURT: Do you need to read that part of it?

MR. APPLEMAN: No.

Q Do you recognize now what Code Section 7206 refers to?

A It refers to something of the penalty applying to the preparer of the return, is that it?

Q For aiding or assisting in the preparation of a false return.

A How does it apply to me?

Q What I would like to know is whether you understand.

A What you read?

THE COURT: Do you mean does he understand what you read?

MR. APPLEMAN: No, does he understand what was meant when this was placed before him in the grand jury.

THE COURT: No, I won't permit that question. It is irrelevant, what he understands now. Did he understand it then.

Q Did you understand it then?

A I don't recall. I don't remember that part.

MR. APPLEMAN: I have no further questions.

THE COURT: All right, Mr. Lawyer.

REDIRECT EXAMINATION

BY MR. LAWYER:

Q You had several conversations and visits with

Special Agent Skolnick and Special Agent La Greca; is that right?

A That is right, sir.

Q Did all of these meetings take place at your office?

A Yes, sir.

Q Did there come an occasion in April of 1971 when Agent Skolnick was at your office and you spoke to Dr. Wolf on the telephone in Agent Skolnick's presence?

A That is right, sir.

Q Would you tell the Court and jury what you said to Dr. Wolf and what he said to you?

A Well, I mentioned to Dr. Wolf -- Mr. Skolnick wanted to know whether he had any bank accounts, so I called Dr. Wolf and asked him and he called me back and I don't recall what he mentioned and what other bank accounts he had, but whatever information he told I told Mr. Skolnick. Mr. Skolnick has a memorandum of that and I go along with whatever he has.

Q Whatever Mr. Skolnick has?

A That is right.

Q You testified earlier that you did not see, if I recall your language correctly, the bank accounts for the Bank of New York or for Bankers Trust. What do you mean you never saw the accounts, sir?

A Well, I mean I never saw the bankbooks.

Q You never saw the passbooks?

A Yes.

Q Or any other books?

A That is right.

Q You have also been questioned about the use of the word "sales" in the doctor's tax returns. Does that mean just sales of medical services?

A That means sales of medical services. That is what it means. He put that down on everything, practically.

Q I show you Government's Exhibit 12 in evidence. I ask you to tell us whether or not the writing on the reverse side of Government's Exhibit 12 at the top is your writing, sir?

A Yes, sir.

Q How about the two signatures at the bottom?

A That is Dr. Wolf's signature.

Q Both signatures are his?

A Yes, sir.

Q How did he come to sign that; did you ask him or what?

A I asked him, yes, sir.

Q Where did the information come from in the text of the statement?

A It came from the work sheets.

16 Q Why did you ask Dr. Wolf to sign it?

A Well, I always do in reference -- I always do as -- any information submitted by Dr. Wolf, I want him to sign it before I incorporate it on the tax return.

Q Is this information that went on the tax return?

A Yes, sir.

Q Now, looking at this do you know why there is a difference between $50,000 figure for the tax in the information he submitted and the $30,000 on the return?

A Yes. The difference between there and the 50, you mean?

Q Yes.

A I don't know the difference itself, but I think it indicated on the work sheets or any other paper what the difference is.

MR. LAWYER: I have no more questions of the witness.

THE COURT: Mr. Appleman?

MR. APPLEMAN: Yes, your Honor.

RECROSS EXAMINATION

BY MR. APPLEMAN:

Q You do remember the telephone conversation which you had on April 8, 1971, with Dr. Wolf but you do not recall whether the Special Agent at that time or prior to the telephone call read a document to you; is that correct?

A No, I don't recall. I don't remember. That is what it is.

Q You state that the doctor always signed a statement as to the information submitted to you for all returns prepared at the time you gave it to him?

A Right.

Q Yet for the years 1966, 1968 and 1969 the only submission for Dr. Wolf's signature is dated February 24, 1970?

MR. LAWYER: This is improper recross.

THE COURT: I will permit it.

Q Is there any reason or can you please tell us why we do not have a signed statement with regard to those individual years which you say you always retained?

A I don't know. Maybe that was more convenient to do it this way. I don't remember.

Q You mean to have him sign in 1970 for 1966 and 1968?

A This covers all of the four years.

Q We have shown that with regard to Defendant's Exhibit E in evidence and Government's Exhibit 15 that although the gross income is equal Defendant's Exhibit E indicates "Above does not include W-2s or 1099sissued to me."

Therefore, this statement signed by Dr. Wolf does not include a 1099 which was submitted to you?

A I assume so, yes.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Anything else, Mr. Lawyer?

MR. LAWYER: No, sir.

THE COURT: All right, thank you, Mr. Edelstein. You may be excused.

THE WITNESS: Thank you. Can I go to my office, your Honor?

THE COURT: Yes, you may. You are excused and the paper that the witness wanted to have copied, we can do that at some time out of court hours and give the original back to the witness.

THE WITNESS: Do it for your convenience and mail it to me.

MR. APPLEMAN: I will mail it to him, your Honor.

THE WITNESS: All right, thank you.

THE COURT: Good.

(Witness excused.)

B29

MR. LAWYER: We call William Eberhart.

WILLIAM EBERHART, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Where do you work, sir?

A At Chemical Bank.

Q What is the address of the particular office where you work?

A 940 Madison Avenue, New York City.

Q Did you work at another Branch prior to your present one?

A Yes, but I have been working in this Branch, this particular one, over twenty years.

Q What is your position there?

A Officer's assistant.

Q What do you do in that position?

A I work in operations on the platform, open the accounts, taking care of the tellers, the various departments.

Q Are you familiar, sir, with the various procedures for cashing checks presented by your customers?

A Sure.

Q Tell us how you would be able to tell whether a particular check was cashed across the counter where that check was not drawn on your bank?

A On the face of the check will appear a Simplex validating machine stamp which will indicate the teller's letter -- Each teller has a letter -- the Branch number, which is 10 in our particular case, the name of the bank and the date.

Q Would that type of stamp appear on any other check which was not cashed across the counter?

A No.

Q I show you Government Exhibit 108 in Evidence. Would you look at the various checks on that exhibit, sir?

A Yes.

Q Would you tell us how many, if any, were cashed across the counter and whether it was at your bank, your Branch?

A The $50. check here at the bottom was cashed at the Chemical Bank.

Q Can you speak more loudly?

A The bottom check of $50. was cashed at the Chemical Bank February 13, 1969.

Q What is the date of the check itself? That is, when it was drafted.

A January 28, 1969.

Q Would you look to see if any of the others beneath--
No.

MR. LAWYER: May the record reflect that Government Exhibit 108 refers to the checks signed by Mrs. Rose Fusco.

THE COURT: And the witness referred to one of those checks?

MR. LAWYER: Yes, sir.

THE COURT: That is, as having been cashed across the counter?

MR.LAWYER: That is correct.

THE COURT: You mean currency was given in exchange for the check?

THE WITNESS: Yes, sir.

Q I show you Government Exhibit 120 in Evidence. will you look at the various checks on that exhibit, sir, and tell us if any were cashed across the counter?

A I believe I counted 12 cashed checks here.

Q Across the counter?

A Yes, sir.

THE COURT: Mr. Lawyer, I think for the record we will have to identify them in some way.

MR. LAWYER: I will do that now.

May the record reflect that 120 in evidence refers to checks of Mr. Martin Weinberger.

Q Sir, I am going to read off these checks and please follow to make sure I don't pick out the wrong check.

A Yes.

Q One check drafted January 5, 1968 for $15. What date was that cashed, sir?

A January 10, 1968.

Q One check dated February 13, 1968 for $15., sir. What date was it cashed?

A February 15, 1968.

Q A check dated March 10, 1968 for $5. On what date was it cashed?

A April 23.

Q One check dated March 19, 1968 for $20. What date was it cashed?

A March 19.

THE COURT: You mean that is the day it was cashed?

THE WITNESS: It was cashed March 19, 1968.

Q A check drafted April 10, 1968 for $20. What date was it cashed, sir?

A April 16.

Q And the year?

A 1968.

Q A check dated May 16, 1968 for $20. What date was it cashed?

A It appears to be May 28, 1968.

MR. APPLEMAN: It appears or is?

THE WITNESS: The date is --

THE COURT: Is it May 1968?

A Yes, 1968. I can't read the date. The pay date is May 29.

THE COURT: Can you read the date when it was cashed?

THE WITNESS: No, the perforation goes thru it. The "2" is pretty clear, but the 8 is --

THE COURT: What is the date of the check?

THE WITNESS: May 16, 1968.

THE COURT: All right.

Q One check dated June 18, 1968 for $20. When was this paid by your bank, sir?

A July 3, 1968, cashed.

Q One check dated July 24, 1968 for $25. When did your Branch cash that?

A September 10, 1968.

Q A check dated July 31, 1968 for $25. When did the bank cash that, sir?

A August 2, 1968.

Q A check dated August 6, 1968 for $25. When did you cash that?

A September 5, 1968.

Q A check dated September 18, 1968 for $25. On what date did you cash that?

A October 14, 1968.

Q A check dated October 15, 1968 for $25. When was that cashed?

A November 8, 1968.

Q A check dated November 18, 1968 for $25. When was that cashed?

A That was not cashed.

Q I show you Government Exhibit 114 in Evidence which, for the record, refers to the checks of Carrie Mitnick. Would you tell us how many checks in there were cashed by your bank across the counter?

A Eight checks.

Q One check dated January 5, 1968 for $105. What date, sir?

A Cashed January 10, 1968.

MR. LAWYER: May I just read off the dates and he will just answer?

THE COURT: Yes.

Q February 9, 1968 for $35.?

A February 23, 1968.

Q March 25, 1968 for $35.?

A April 23, 1968.

Q May 6, 1968, $70.?

A May 7, 1968.

Q July 18, 1968 for $970.?

A July 25, 1968.

Q September 3, 1968 for $70.?

A September 18, 1968.

Q September 16, 1968 for $70.?

A October 14, 1968.

Q December 2, 1968, $70.?

A December 11, 1968.

Q Were there others in that exhibit?

A No.

Q I show you Government Exhibit 107 for Identification. Would you look thru the documents included in that exhibit, sir, and tell us whether any checks were cashed across the counter?

A One check.

THE COURT: What is the exhibit, Mr. Lawyer?

MR. LAWYER: 107 for identification, your Honor.

Q Are you referring to a check, sir, dated February 6, 1968 for $50.?

A Cashed on February 15, 1968.

B30 Q I show you Government Exhibit 104 for Identification. Tell us whether or not any of those were cashed, sir.

A One check.

Q Are you referring to the check dated Septmeber 30, 1968 for $30.?

A It was cashed October 14, 1968.

Q I show you Government Exhibit 118 in Evidence which refers to the checks of Mrs. Eleanor Schneider. Tell us whether or not any of those checks were cashed across the counter, sir.

A Eight of Chemical Bank.

Q Show me the first one in that series, sir.

Is that a check dated June 29, 1967 for $25.?

A June 30, 1967.

Q A check dated September 7, 1967 for $25.?

A September 11, 1967.

Q One check dated October 1, 1967 for $25.?

A October 3, 1967.

Q One check dated November 1, 1967 for $25.?

A November 2, 1967.

Q Check dated January 3, 1968 for $25.?

A January 10, 1968.

Q A check dated April 1, 1968 for $25.?

A April 17, 1968.

Q A check dated July 5, 1968 for $25.?

A July 8, 1968.

Q A check dated October 1, 1968 for $25.?

A November of 1968. I can't read the date.

Q Are you referring to a check which is numbered 1196?

A Yes, sir.

THE COURT: Mr. Eberhart, tell us again, because I am afraid I have forgotten it, how you are able to identify the checks that are cashed across the teller's counter.

THE WITNESS: There is a Simplex validating machine, an electric machine, that you put the check into and it dates it as the date the Chemical Bank -- It is a slug that goes in with the teller's letter, Branch number and the Chemical Bank. The date is already in the machine, The slug has this reading on it.

THE COURT: Does the teller to whom the check is presented do that when he cashes the check?

THE WITNESS: Yes, and those are separated at the end of the day. They are listed as cashed checks.

THE COURT: All right.

Q I show you Government Exhibit 117 in Evidence which, for the record, refers to the checks of Mr. Adolph

Rubel. Would you go thru that, sir, and tell us how many check were cashed across the counter of your Branch?

A Six checks.

Q Would you show me the first one? This is a check dated May 2, 1967 for $6.

A $60.

Q $60.

A May 18, 1967.

Q A check dated June 19, 1967 for $25.

A June 26, 1967.

Q A check dated August 16, 1967 for $50.

A September 1, 1967.

Q A check dated December 19, 1967 for $25.

A December 21, 1967.

Q A check dated March 4, 1968 for $25.

A March 6, 1968.

Q A check dated April 23, 1968 for $25.

A April 26, 1968.

Q I show you Government Exhibit 71B in Evidence which refers to International Telephone & Telegraph checks. Sir, how many, if any, of those checks were cashed at your Branch?

A Two checks.

Q A check dated May 13, 1968 for $100.

A May 15, 1968.

Q A check dated August 9, 1968 for $280.

A September 10, 1968.

Q Sir, I show you Government Exhibit 65D and I show you three checks, sir. Would you look at those three checks and tell us whether or not they were cashed at your bank?

This document which is dated September 22, 1969 --

A October 30, 1969.

Q -- in the amount of $42.80.

I show you this document dated September 24, 1969 in the amount of $70.40.

A October 30, 1969.

Q I show you Government Exhibit 121 for Identification. Would you look at that, sir, and tell us how many documents in that exhibit were cashed at your Branch?

A Eleven checks.

Q Show me the first one. This is a check dated June 15, 1967 for $15.

A June 26, 1967.

Q Show me the next one, please.

A check dated October 19, 1967 for $15.

A October 24, 1967.

Q A check dated December 14, 1967 for $15.

A December 21, 1967.

Q One check dated January 15, 1968 for $10.

A January 26, 1968.

Q One check dated February 17, 1968 for $130.

A February 27, 1968.

Q One check drafted March 29, 1968 for $450.

A April 10, 1968.

Q One check dated April 15, 1968 for $40.

A April 24, 1968.

Q One check dated June 14, 1968 for $50.

A July 3, 1968.

Q One check dated July 18, 1968 for $15.

A July 25, 1968.

Q One check dated August 15, 1968 for $25.

A September 5, 1968.

Q One check dated October 7, 1968 for $40.

A October 25, 1968.

Q What is the number of your Branch?

A 10

Q Does that number appear on all the stamps on the checks?

A Yes.

Q I show you Government Exhibit 37 in Evidence. Would you look at the various documents in that exhibit, sir? Just list the sheets and look at them.

MR. LAWYER: For the record, Government Exhibit 37 in Evidence refers to the money orders and official checks of Chemical Bank.

Q Sir, would you tell us whether by looking at those documents and considering the usual habitual practices of your bank's Branch whether any of those documents were paid for in cash?

A The money orders would be.

THE COURT: You mean paid for by the purchaser from the bank?

MR. LAWYER: I'm sorry. I do mean that.

THE COURT: All right.

A Personal money orders are purchased with cash.

THE COURT: You mean always?

THE WITNESS: Yes, always. The only other time that it might not be would be if they had a savings account of a small amount where instead of issuing an official check they would buy with funds from the savings account a money order.

Q How would you be able to tell if in fact funds were taken from the savings account with the check?

A No, the check wouldn't indicate it, no way.

Q How about the official check, sir?

A Official checks can be purchased with cash or they can be issued for money withdrawn from savings accounts or a checking account.

Q Looking at those particular official checks included in Government Exhibit 37 in Evidence, are you able to say --

A No, sir, there is no way of determining whether it is cash or any withdrawals from an account.

B31 Q Is it part of the habitual practice of your Branch to note the savings account number on an official check if you do debit the account for it?

A No, not on the check itself. The only notation would be on a withdrawal ticket made out by the customer.

MR. LAWYER: I have no more questions.

THE COURT: Mr. Eberhart, again if I understood, any money order bought from Chemical Bank is always bought for cash or currency?

THE WITNESS: It can be bought usually for cash. If you have a savings account and you wish to withdraw money from the savings account, a small savings account, say a $500. account, we prefer to have the customer buy a money order rather than issue an official check of the bank, but it would represent, in essence, cash regardless of whether it is actual --

THE COURT: The savings account would be a savings account at Chemical Bank?

THE WITNESS: At our particular Branch.

THE COURT: So that if I came in with a cashier's check of Barclays Bank to buy a draft from Chemical you would sell me an official check not a money order?

THE WITNESS: That is right, yes, but we wouldn't normally do that unless you have an account with us. You know, you just wouldn't walk in, so to speak.

THE COURT: In other words, this is an accommodation for depositors?

THE WITNESS: Official checks are only issued to depositors of the bank or issued in lieu of the purchase of securities.

THE COURT: But a money order would be iseued to anybody and it would be paid for either in currency or by withdrawal from a relatively small savings account at your Chemical Bank Branch?

THE WITNESS: Yes, sir.

THE COURT: Mr. Appleman?

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q I show you Government Exhibit 108 in Evidence consisting of checks made out by Rose Fusco. Please tell me how many checks there were not cashed?

A Were not cashed?

Q Were not cashed.

A Thirteen.

Q Thirteen checks?

A Not cashed.

Q From Rose Fusco to Dr. Wolf were not cashed?

A At the Chemical Bank.

Q Were they cashed anyplace, sir?

A I don't know that, sir. I don't believe they were. From the stamp on these checks they would have all been deposited.

Q I wish to show you Government Exhibit 120 in Evidence which are checks drawn by a Martin Weinberger to Dr. Wolf. How many of these check were not cashed?

A 16

Q Sixteen checks were not cashed?

A Not cashed.

Q I wish to show you Government Exhibit 114 in Evidence, checks drawn by a Carrie Mitnick to Dr. Wolf. How many of these checks were not cashed?

A Six.

Q Six were not cashed.

Please look at Government Exhibit 107 for Identification, checks drawn by Estelle Cohen to Dr. Wolf. Can you please tell me how many of those checks were not cashed?

A Fourteen.

Q Fourteen checks were not cashed?

A That is right.

Q Please look at Government Exhibit 104 in Evidence, checks drawn by Henrietta Bernstein to Dr. Wolf. How many of these checks were not cashed?

A Eight not cashed.

Q Please look at Government Exhibit 118 in Evidence, checks drawn by Eleanor Schneider. Would you please tell me how many of these checks were not cashed?

A When you say not cashed, you mean by Chemical Bank?

Q Yes.

A Twelve checks were not cashed.

Q I show you Government Exhibit 117 in Evidence, checks drawn by Adolph Rubel made payable to Dr. Wolf. Would you please tell me how many of these checks were not cashed?

A Eight not cashed.

Q Please look at Government Exhibit 71B, checks from ITT made payable to Dr. Robert Lawrence Wolf. How many of those checks were not cashed?

A Five.

MR. LAWYER: With respect to 65D, it is only marked for identification and it is very voluminous. May we stipulate just to the effect that only two of the checks were cashed, Mr. Appleman?

MR. APPLEMAN: Yes. These are checks made payable for Medicare.

THE COURT: All right.

Q Sir, I show you Government Exhibit 121 for Identification. Would you please tell me how many of those checks were not cashed?

A Twenty-four.

Q Twenty-four not cashed?

A Yes.

Q Therefore, sir, in no instance did you find checks drawn by one party all cashed?

A That is right.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Mr. Lawyer?

REDIRECT EXAMINATION

BY LAWYER:

Q You said checks were not cashed in every single instance. You mean at your bank?

A At Chemical Bank, yes, sir.

MR. LAWYER: No further questions.

THE COURT: Mr. Appleman?

RECROSS-EXAMINATION

BY MR. APPLEMAN:

Q Would you know if any of these checks were cashed at any other bank?

A I think there were a couple of others at another bank, but I can't be certain of that.

MR. APPLEMAN: No further questions.

THE COURT: Thank you, Mr. Eberhart, you may be excused.

[Witness excused]

MR. LAWYER: Joseph Bradley.

JOSEPH BRADLEY, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation, sir?

A I am tax manager for Tenneco Chemicals, Incorporated.

Q Do you know Dr. Robert Wolf?

A Yes, I do.

Q Do you see him in court?

A Yes, I do.

Q Would you point him out?

A Over there [indicating].

MR. LAWYER: I think the record should show the identification.

Q How did you come to know him?

A My wife is his patient.

Q Do you recognize your wife's signature, sir?

A Yes, I do.

Q I show you Government Exhibit 105 for Identification. I ask you to look at the two checks on that exhibit, sir, and tell me whether or not the signature if that of your wife?

A Yes, that is my wife's signature.

Q I ask you to look at the third documents on the sheet at the top of the page and tell us what this document is, sir?

A It is a money order check stub.

Q Were the two checks and the money order given to Dr. Wolf, sir?

A They are made out to Dr. Wolf, yes.

Q For what?

A For my wife's visits to his office for services performed for my wife.

MR. LAWYER: Ifoffer 105.

THE COURT: Show it to Mr. Appleman.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

xx [Government Exhibit 105 received in Evidence]

MR. LAWYER: May I read the dates and the amounts, your Honor?

THE COURT: You may.

[Mr. Lawyer read from Government Exhibit 105]

MR. LAWYER: I have no more questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Did the Doctor ever request payment for his services in cash?

A My wife paid the bills and I never personally paid the bills so --

Q You wouldn't know?

A I wouldn't know if he requested it in cash, no.

Q Did you wife ever ask you not to claim these expenditures as deductions?

MR. LAWYER: Objection.

THE COURT: I will permit it.

A Will you repeat the question, please?

Q Did you wife ever ask you not to claim these expenditures as medical deductions on your income tax?

A No.

B32

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Anything else?

MR. LAWYER: No.

THE COURT: Thank you, Mr. Bradley, you may be excused.

[Witness excused]

MR. LAWYER: The Government calls M.D. Cooper, Jr.

M. D. COOPER, JR., called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Mr. Cooper, do you know Dr. Robert Wolf?

A Yes, I do.

Q Do you see him in court?

A Yes, I do.

Q Would you point him out?

A [Indicating]

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes.

Q Have you been a patient of Dr. Wolf, sir?

A Yes, I have.

Q I show you Government Exhibit 106 for Identification.

Would you look at each of these separate documents on that sheet, sir, and tell us whether or not you can identify them?

A Yes.

Q What are they?

A They are personal checks on my checking account.

Q Did you give all of those to Dr. Wolf for medical services?

A Yes.

Q Would you tell us how many physical checks there are included in Government Exhibit 106, sir? Just count the number.

A Nine.

MR. LAWYER: I offer 106.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark it.

xx [Government Exhibit 106 received in Evidence]

MR. LAWYER: I just ask permission to read the years.

[Mr. Lawyer read from Government Exhibit 106]

MR. LAWYER: I have no more questions of this witness.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Did the Doctor ever request payment for his services in cash?

A No.

Q Did the Doctor ever request that you do not claim these expenditures as deductions on your income tax returns?

A No.

MR. APPLEMAN: No further questions.

THE COURT: Anything else?

MR. LAWYER: No, sir.

THE COURT: Thank you, Mr. Cooper, you may be excused.

THE WITNESS: Thank you.

[Witness excused]

MR. LAWYER: The Government calls Lewis R. Gary.

LEWIS R. GARY, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation, Mr. Gary?

A I work for the City of New York. I am Deputy Director of Comprehensive Planning.

Q Do you know Dr. Robert Wolf?

A I have been his patient, yes.

Q Do you see Dr. Wolf in court?

A It's been a long time. I think the man in the brown suit is Dr. Wolf, but I'm not positive.

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes.

Q I show you Government Exhibit 47 in Evidence. I direct your attention to the photographic copy of one check, sir, which is dated August 18, 1969 and drawn for $35. Did you write out the original check, sir?

A That is my signature. I recall the event, yes.

Q Did you give that to Dr. Wolf for medical services?

A I would have given it to his receptionist.

Q For medical services?

A For a business colleague of mine, for NLB on the top of the check; for Neil R. Bruchman, medical. That is my notation on the top of the check. I escorted him that day.

THE COURT: In other words, it is for medical services but for someone other than yourself?

THE WITNESS: Indeed.

THE COURT: All right.

MR. LAWYER: No further questions.

MR. APPLEMAN: No questions, your Honor.

THE COURT: All right, thank you, Mr. Gary, you may be excused.

[Witness excused]

THE COURT: Now, Mr. Foreman, ladies and gentlemen of the jury, suppose we take a break now for the afternoon. You may retire for a few minutes.

[Recess]

MR. LAWYER: The Government calls Mrs. Henrietta Bernstein.

HENRIETTA BERNSTEIN, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Are you employed at present, Mrs. Bernstein?

A No.

Q Do you know a person by the name of Dr. Robert L. Wolf?

A Yes, I do.

Q Do you see Dr. Wolf in court?

A Yes, I do.

Q Would you point him out?

A Right over there [indicating].

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes.

THE WITNESS: Can you speak a little louder? I am a little hard of hearing.

Q Have you ever been a patient of Dr. Wolf's, m'am?

A Yes, I have.

Q I ask you to look at the checks which I have placed before you and which are included in Government Exhibit 104 for Identification. Look at each one and tell me whether or not you recognize the signatures.

A Yes, I do. They are mine.

Q Were these checks given to Dr. Wolf for medical services?

A Yes, they were.

Q For who?

A For myself and my husband.

Q Would you count the checks and tell us how many are included, m'am?

A Nine.

MR. APPLEMAN: No objection, your Honor.

MR. LAWYER: I offer 104.

THE COURT: All right, mark them.

xx [Government Exhibit 104 received in Evidence]

MR. LAWYER: I ask to read simply the years to which the checks refer.

THE COURT: You may.

[Mr. Lawyer read from Government Exhibit 104 in Evidence]

Q Did you ever make any cash payments to Dr. Wolf?

A Only my very first two visits. I didn't have a check on me on my first two visits.

Q What year was that?

A 1967.

MR. LAWYER: No further questions.

THE COURT: Wait just a minute, Mrs. Bernstein. We have a lawyer for Dr. Wolf who is entitled to ask questions.

THE WITNESS: I'm sorry.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Did the Doctor request payment in cash?

A Never.

Q Did he ever request that you not report these payments to him as deductions on your income tax return?

A Never.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Anything else?

MR. LAWYER: No, sir.

THE COURT: Thank you, Mrs. Bernstein.

[Witness excused]

MR. LAWYER: The Government calls Mrs. Estelle Cohen.

ESTELLE COHEN, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Do you know Dr. Robert L. Wolf, m'am?

A Yes, I do.

Q Do you see the Doctor in court?

A Yes, I do.

Q Where is he?

A He is sitting at the second table on the right.

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes, it may.

Q How did you come to meet Dr. Wolf?

A I met Dr. Wolf because he is my mother's doctor and I met him at the hospital, Mt. Sinai Hospital, at first.

Q I show you Government Exhibit 107 for Identification.

A Yes, sir.

Q I ask you to look at the various checks which are included in Government Exhibit 107 and tell the Court and the jury whether your signature appears on those documents?

A Yes.

Q Would you look at each one, please?

A Yes.

Q Your signature does appear on each one?

A Yes.

Q How many separate checks are in there, m'am?

A Separate?

Q Yes, count the number physically.

A Six in the first batch, one in the second.

Q Seven?

A One in the third.

Q Eight.

A Seven in the last.

Q Fifteen?

A Yes.

THE COURT: Are they your checks, Miss Cohen?

THE WITNESS: Yes, sir.

Q What were those checks for?

A They were for services rendered for my mother.

MR. LAWYER: We offer 107.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark it.

xx [Government Exhibit 107 received in Evidence]

B33 Q Mrs. Cohen, I show you on Government Exhibit 107 in Evidence a check which has the preprinted number in the upper right-hand corner of 894. The check is drawn for $135. you will notice.

A Yes.

Q And there is a date written in hand of January 22, 1967. Is that your writing, m'am?

A Yes.

Q Is that the correct date?

A Yes, that is to the best -- Yes, that is the date I wrote.

Q On the back of the check it appears to have been cashed February 1968. Is it possible that you at the turn of the year just put the wrong year on it?

A It is a possibility.

MR. LAWYER: I have no other questions, your Honor.

THE COURT: Mr. Appleman?

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mrs. Cohen, all these payments were for services rendered to your mother?

A Yes.

Q When your mother visited Dr. Wolf did you go with her?

A On occasion.

Q In other words, did you mail these payments to the Doctor?

A Yes.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: All right. Anything else?

MR. LAWYER: No, sir.

THE COURT: Thank you, Mrs. Cohen. You may be excused.

THE WITNESS: Thank you.

[Witness excused]

THE COURT: I am told by the Clerk that one of the jurors wants to know if it is all right if his wife sits in court tomorrow. The answer is, of course, yes. Under our system, as a requirement of our law court is open at all times. It must be. And you can see that if a trial is public, if anybody can come in then the principle is and it is more apt that things be done properly and regularly because anybody who wants to come in, and I mean including notably, for example, the press, can come in, and of course a juror's wife can come in or anybody else. That doesn't mean that a member of the jury can talk to his wife or any other member of his family about the case on trial. But certainly there is no reason why relatives, friends, wives, husbands of the jurors can't come in and sit in court.

All right, Mr. Lawyer.

MR. LAWYER: The Government calls Nedda Marus.

NEDDA MARUS, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Do you teach school, Miss Marus?

A Yes, I am a guidance counselor.

Q Where do you teach?

A North Babylon Junior High School.

Q Do you know Dr. Robert Wolf?

A Yes, I do.

Q Do you see him in court?

A Yes, I do.

Q Where is he seated?

A Over there [indicating].

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes.

Q Has Dr. Wolf been your doctor, m'am?

A Yes.

Q I show you Government Exhibit 113 for Identification, Miss Marus. Would you look at each individual check included on that exhibit and tell us whether or not your signature appears on any of them?

A My signature appears on all of them.

Q How many checks are included in there, m'am?

A Fifteen.

Q Were all fifteen checks given to Dr. Wolf for medical services?

A Yes, they were.

Q For yourself?

A Yes.

MR. APPLEMAN: No objection, your Honor.

MR. LAWYER: I offer 113.

THE COURT: Without objection, it will be received.

xx [Government Exhibit 113 received in Evidence]

MR. LAWYER: May I read the years?

THE COURT: You may.

MR. LAWYER: Government Exhibit 113 contains checks all of which fall on various dates included in 1966, 1967 and 1968.

Q Did you ever make any cash payments to Dr. Wolf?

A Not to Dr. Wolf, always to the nurse, and there might have been two or three.

Q To Dr. Wolf's nurse?

A Yes.

Q For medical services?

A Yes.

Q What years, approximately?

A '66, '67.

MR. LAWYER: No more questions, your Honor.

MR. APPLEMAN: I believe these checks, your Honor, are from 1966, 1967 and 1969. There are no checks here from 1968.

THE COURT: Agreed, Mr. Lawyer?

MR. LAWYER: That is what I said.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Miss Marus, did the Doctor request payment for his services in cash?

A Never.

Q Did the Doctor ever request that you do not claim payments made to him as medical deductions?

A Never.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Thank you. You may be excused.

[Witness excused]

MR. LAWYER: We call Henry Weinberger.

HENRY WEINBERGER, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q How do you make a living, Mr. Weinberger?

A I practice law.

Q You pratice law in New York City?

A Yes, sir.

Q What kind of practice?

A I am general counsel for an automobile leasing company.

Q Do you know Dr. Robert Wolf?

A Yes, I do.

Q Do you see Dr. Robert Wolf in court?

A Yes, sir.

Q Would you point him out.

A He is right at counsel table.

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes.

Q Did you ever go to Dr. Wolf as a patient, sir?

A Yes, sir.

Q Mr. Weinberger, I have placed before you Government Exhibit 119 for Identification. Would you look at each individual document included in the exhibit and tell us whether or not any of those documents contain your signature?

A It is my signature on every one of them.

Q How many checks are included in the exhibit?

A Nine.

MR. APPLEMAN: No objection.

MR. LAWYER: I offer 119.

THE COURT: All right.

xx [Government Exhibit 119 received in Evidence]

MR. LAWYER: May the record reflect that each of the nine checks contains a separate date, all of which fall within the year 1969.

THE COURT: All right.

Q Mr. Weinberger, were all of these checks in payment for medical services to you personally?

A No.

Q Who else was treated?

A Well, my wife and maybe one or two of my children at the time.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Did Dr. Wolf ever request payment for his services in currency or cash?

A Dr. Wolf never talked to me about money.

Q Did Dr. Wolf ever request that you do not claim these payments to him as deductions on your income tax returns?

A No, sir.

MR. APPLEMAN: No further questions.

THE COURT: Anything else?

MR. LAWYER: No, sir.

THE WITNESS: Thankyou.

THE COURT: Thank you, Mr. Weinberger. You may be excused.

[Witness excused]

MR. LAWYER: The Government calls Samuel Weinberger. I am advised that he has difficulty hearing and I will have to stand much closer.

THE COURT: All right.

SAMUEL WEINBERGER, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation, Mr. Weinberger?

A You got to get closer with me. Come nearer.

Q What is you occupation, sir?

A I'm retired.

Q What did you do before you went into retirement?

A I was a real estate and insurance broker.

Q Do you know Dr. Robert Wolf?

A I do.

Q Do you see Dr. Wolf in court?

A I do.

B34 Q Would you point to him?

A He is sitting over there [indicating].

THE COURT: Yes, the identification is made. The record will so show.

Q Have you been a patient of Dr. Wolf's?

A I have.

Q I ask you to look at the documents included in Government Exhibit 121 for Identification. Tell us whether or not your signature appears on any of those documents?

A May I have that again?

Q I ask you to look at each of the checks included on this sheet and tell us whether or not your signature is on each of these documents.

A They are my signatures on those checks.

Q Every check?

A Every check.

Q Did you give these checks to Dr. Wolf for medical services?

A I didn't give it to him, didn't hand it to him.

Q You mailed them?

A I mailed them to him.

Q What were they for?

A In payment of professional services for me and my wife.

THE COURT: What is your count, Mr. Lawyer?

MR. LAWYER: Thirty-five. I was going to ask defense counsel to stipulate to thirty-five.

THE COURT: We will take your word for it and if it turns out to be wrong we will correct it.

MR. APPLEMAN: I will stipulate to it, your Honor.

MR. LAWYER: I offer 121.

MR. APPLEMAN: No objection.

THE COURT: Mark it.

xx [Government Exhibit 121 received in Evidence]

MR. LAWYER: May the record reflect that Government Exhibit 121 contains thirty-five checks which have various dates on them all of which fall in the years 1966, 1967, 1968 and 1969.

I have no other questions of this witness.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mr. Weinberger, did the Doctor ever request payment from you in cash or currency?

A No.

Q Did the Doctor ever request that you not claim these payments to him as deductions for medical on your income tax return?

A Never.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Thank you, Mr. Weinberger, you may be excused.

THE WITNESS: Thank you.

[Witness excused]

MR. LAWYER: We call Helene Winston.

HELENE WINSTON, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What is your occupation, m'am?

A Secretary.

Q Do you know Dr. Robert L. Wolf?

A Pardon?

Q Do you know Dr.Robert Wolf?

A Oh, yes, very well.

Q Do you see him in court?

A I see him now.

Q Where is he, m'am?

A Right there [indicating].

MR. LAWYER: May the record reflect the identification?

THE COURT: Yes.

Q Have you been a patient of Dr. Wolf?

A Yes.

Q I show you Government Exhibit 122 for Identification. Would you look at the documents included on that exhibit, m'am?

A Yes.

Q Please tell us whether or not your signature appears on either of the documents.

A Yes.

Q Your signature is on both documents?

A Yes.

Q Did you give these to Dr. Wolf or mail them to him for medical services?

A Yes.

MR. APPLEMAN: No objection, your Honor.

MR. LAWYER: We offer 122.

THE COURT: All right, mark it.

xx [Government Exhibit 122 received in Evidence]

MR. LAWYER: May the record reflect that 122 in evidence consists of two checks both for the year 1969 and both for $40.

No more questions.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mrs. Winston, did Dr. Wolf ever request payment for his services in cash or currency?

A Never.

Q Did Dr. Wolf ever request that you do not claim these payments to him as deductions on your income tax return?

A Never.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Thank you. You may be excused.

[Witness excused]

MR. LAWYER: Your Honor, the Government calls Mr. Eze Bashi.

EZE BASHI, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q How do you make your living, Mr. Bashi?

A I work for United Medical Services, better known as Blue Shield.

Q What is the address at which you work?

A The head office is at 2 Park Avenue. I work at 120 East 23 Street.

Q In Manhattan?

A Yes.

Q How long have you been with Blue Shield or United Medical Services?

A About six years.

Q Tell us just what is United Medical Service; what does it do?

A United Medical Service is a health insurance company and we pay doctors' bills, mainly doctors and patients.

Q What is your position there, sir?

A I am a general accountant there.

Q In that capacity, just what are the duties you perform for United Medical Service?

A I handle the investments of the company, cash management. I help in the preparation of the financial statements and I also handle doctors' earnings.

Q What kind of programs are at UMS?

A Pardon me?

Q What kind of programs are included?

A We have programs known as the Blue Shield Plan, Medicare and CHAMPUS.

Q What are the procedures by which claims are made and paid for medical services?

A We receive a claim which is signed by both the doctor and the patient and the doctor checks off whether he has been paid or he has not been paid. If the doctor has been paid the check goes to the subscriber. If the doctor has not been paid the check goes to the doctor.

Q When you say the subscriber, do you mean persons who have insurance policies by United Medical Service?

A Yes.

Q What does a doctor do if he wants to receive his payments?

A He has to be participating in the plan.

Q I'm sorry, sir. I can't hear you.

A If a doctor wants to get payments from us he has to be a participating physician.

Q How do you become a participating physician?

A We send him a form and he signs an agreement that he is participating.

Q Does it cost him anything?

A No, it doesn't cost him anything.

THE COURT: Blue Shield is nonprofit, isn't it?

THE WITNESS: Yes, it is a nonprofit organization.

THE COURT: Is it affiliated with the hospitals in some way or is it separate?

THE WITNESS: It is more or less -- Blue Cross is a sister company of ours but we are not affiliated. It is two separate corporations, but we have a lot in common. Billing and everything is in common.

THE COURT: But it is nonprofit?

THE WITNESS: It is nonprofit.

Q Is United Medical Service itself nonprofit?

A It is.

Q In your capacity as a general accountant with

United Medical Service are you personally familiar with the files and records which are made and which are maintained pertaining to patients, subscribers and to doctors' earnings?

A Yes.

Q Are you also familiar with whatever records United Medical Service keeps with respect to financial information with respect to patients and doctors?

A Yes, we have checks.

Q I show you Government Exhibt 60 for Identification. Do you know what that is, sir?

A Yes, this is an agreement by which the doctor agrees to be a participating physician.

Q And to what doctor does that exhibit refer?

A This exhibit refers to Dr. Robert L. Wolf.

Q Does it bear a signature?

A It has a signature of Dr. Wolf.

B35 MR. LAWYER: Your Honor, we offer 60.

MR. APPLEMAN: I would object to that because on the form itself it says "Resigned May 21, 1962."

MR. LAWYER: It does say that, your Honor. I will connect it.

THE COURT: All right. Overruled on Mr. Lawyer's statement. You are free to make a motion to strike at a later time.

xx [Government Exhibit 60 received in Evidence]

Q Was a number, a code number assigned to Dr. Wolf when he became a participant, sir?

A Yes, a code number assigned to him is 12051.

Q Government Exhibit 60 reflects that Dr. Wolf subsequently resigned as a participating doctor; is that correct?

A Yes.

Q What date does the document reflect that?

A "Resigned 5/21/62."

Q Tell us whether United Medical Service will pay doctors even though they are not formally participating in the program of United Medical Service.

A We do. If he gets an assignment from the patient we pay him.

Q I'm sorry?

A If the doctor gets an assignment from the patient we send a check to him.

Q Just in the normal course of business, how does that work? What do you mean by assignment from the patient?

A It is just a box that he crosses on the claim form which says that he accepts assignment. The patient --

Q It is just a piece of paper?

A It is a claim form and there is a box there which he has to cross off that he accepts assignment, so then the check goes to him.

Q To the doctor?

A Yes.

Q In such a case as that where a doctor is not participating, does he also get a code number from United Medical Service?

A It is the same code number.

Q Mr. Bashi, I have placed before you Government Exhibit 62A for Identification. Look at 62A and tell us whether or not you recognize it?

A Yes.

Q What is 62A for identification, sir?

A This is a doctor's earnings statement for the first quarter of 1966.

Q What do you mean the first quarter, the first three months of 1966?

A I'd say the first page is the first quarter, second quarter, third quarter and fourth quarts of 1966.

Q Are you able to look at Government Exhibit 62A for Identification and tell us which doctor it refers to or at least various of the entries refer to?

A Yes.

Q I'm sorry. Let me withdraw that.

I ask you to look at Government Exhibit 60 in Evidence and tell us whether or not the code number on Government Exhibit 60 in Evidence appears anywhere on Government Exhibit 62A for Identification?

A Yes, it appears. The doctor's code No.12051 appears over there and those payments are the payments made to code No.12051.

Q Are you able to tell who that doctor is?

A Yes, we assign a code number to each doctor and this code number pertains to Dr. Robert L. Wolf.

Q What year does Government Exhibit 62A refer to?

A This refers to the year 1966.

Q Mr. Bashi, even though Dr. Wolf resigned from the program did he retain the same code number then?

A He did retain the same code number.

Q I ask you to look at Government Exhibit 62B before you. Are you able to identify 62B for identification, sir?

A Yes, this is also a statement of doctor's earnings.

Q Does Dr. Wolf's code number appear thereon?

A Yes, code No.12051 appears here, which is Dr.Wolf's code number assigned to him.

Q How many sheets appear in 62B for identification?

A This is just one sheet here which is the fourth quarter of the year 1966.

Q How are such documents as 62A and 62B for identification prepared, sir?

A These are computer print-outs which we have in our office on microfilm.

Q And where does the original information that is included on 62A and 62B for identification come from?

A The original documents is a print-out from the computer print-out.

Q The information that goes onto the computer comes from where?

A The information that goes onto the computer is the payments made to the doctor which are reflected here. There are different columns all the way across: Check number, amount, name of the patient.

Q Once the computer print-outs are made, sir, you say that they are microfilmed?

A Yes.

Q Are they microfilmed in the normal course of business?

A They are microfilmed in the normal course of the business and the computer print-outs are destroyed.

Q Can you tell us whether or not that is true with 62A and 62B; that is, they were microfilmed in the normal course?

A Yes, they were microfilmed.

MR. LAWYER: We offer 62A and 62B.

THE COURT: Mr. Bashi, I understand that these two groups of papers represent your computer record of checks issued by Blue Shield to Dr. Wolf.

THE WITNESS: No, it is checks issued to Dr. Wolf and his patients combined.

THE COURT: And his patients?

THE WITNESS: Right.

THE COURT: Do the documents distinguish between whether the check went to Dr. Wolf or went to his patient?

THE WITNESS: There is a particular code number there, if you see it, a certain code there which tells you this check went to the Doctor and another check went to the patient. Only I can identify that.

MR. APPLEMAN: Your Honor, I wish to object due to the fact that we don't know that all the checks were received by the Doctor and we are not interested in the patient.

THE COURT: I suppose it would be some evidence that they patients had paid the Doctor.

MR. LAWYER: May I ask just a couple of more questions?

THE COURT: All right.

Q In the normal course of the business, sir, must United Medical Service receive some document signed by the doctor before they will disburse a check to the patient?

A Yes, we receive a claim form signed by the doctor and the patient. On that basis we make a check.

Q To the patient?

A Either to the patient or the doctor, depending --

THE COURT: But before you make it to the patient the doctor has to indicate on the form that he has been paid?

THE WITNESS: Right, exactly. There is a box there that he has to fill out.

MR. LAWYER: I reoffer it.

THE COURT: All right.

MR. APPLEMAN: I wish to object, your Honor, just based on my experience with Blue Cross and Blue Shield.

THE COURT: I will overrule the objection. Mark it.

XX [Government Exhibits 62A and 62B received in Evidence]

THE COURT: Is that all for this witness?

MR. LAWYER: It may take another half hour.

THE COURT: I am afraid we will have to ask Mr. Bashi to come back tomorrow.

I am sorry, Mr. Bashi, but we won't be able to finish with you today. We will start at 9:30 tomorrow. I am sorry it worked that way. Will you be good enough to be here at 9:30. We will complete you as soon as we can.

THE WITNESS: Okay.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, don't discuss the case amongst yourselves or with anybody else. We will meet at 9:30 tomorrow. We will all make an effort to be here at 9:30 and we will try to start then. Thank you. You may retire.

[The jury left the courtroom]

THE COURT: You may be excused.

[Witness excused]

B36 MR. LAWYER: Mr. Bashi would very much like his original Exhibit 60 back. Will you stipulate that we can substitute a copy, Mr. Appleman?

MR. APPLEMAN: Yes. This is a copy.

THE COURT: All right. We will change the designation. What is the copy now marked?

MR. LAWYER: The same thing, your Honor. We will just substitute it physically.

MR. APPLEMAN: One is a copy and one is a copy of a copy.

THE COURT: All right.

Now, Mr. Lawyer, I never got back to you about your report. You were about to report this morning as to the witness Esquerra. Do you remember?

MR. LAWYER: Mr. Esquerra spoke to me by telephone. He stated that the withdrawal with which we were concerned yesterday that came up during his cross-examination was a cash withdrawal in the amount of $6,935.

THE COURT: Does that meet your point, Mr. Appleman?

MR. APPLEMAN: Yes, your Honor.

THE COURT: All right.

MR. LAWYER: There was one other matter that came up, your Honor.

THE COURT: Yes, Mr. Gallagher.

MR. LAWYER: Mr. Gallagher left in my office -- I was not present and I did not speak to him -- copies or, rather, apparently original savings account withdrawal slips. There are four such slips. Quite frankly I don't know quite what to say about them. I believe Mr. Weisberg, my colleague may know.

THE COURT: Mr. Appleman requested them. Is there any reason why they shouldn't be made available to him?

MR. LAWYER: No, sir. I just didn't remember what it was we wanted to do with them.

THE COURT: It is a request of Mr. Appleman. Why don't you keep them overnight, Mr. Appleman.

MR. APPLEMAN: Fine.

THE COURT: And don't forget to report on them tomorrow morning so we can settle this minor problem.

MR. APPLEMAN: I will make photocopies. Let the record show I will make photocopies for Mr. Lawyer.

THE COURT: All right. I wanted to give you a chance, Mr. Appleman, to make an offer of proof on the marital difficulty point. In other words, I feel obliged to shut you off on that topic in front of the jury, but against your desire to make a record I will permit you to make any offer of proof now that you would like to make.

MR. APPLEMAN: The only offer of proof I can make is the fact that the defendant, Dr. Wolf, has been in and out of court continuously since the marital difficulties began. As a matter of record, I think in 1972 he was the first person in the last ten or fifteen years that was placed in alimony jail for three months.

THE COURT: Naturally I am sympathetic, but as I have indicated, I do not feel that that is relevant to any issue here and I can't permit it. But I think you have made your offer of proof and the record shows it.

MR. APPLEMAN: Your Honor, wouldn't that reflect a state of mind with regard to the keeping of his records with regard to the fact that he was continuously going to court rather than being able to apply his resources and strength to his business and keeping the records?

THE COURT: No, I don't think it would. I think distractions or diversions -- I mean, we'd never finish a lawsuit if that were a defense. No, we have a defense of insanity and short of that --

MR. APPLEMAN: No, your Honor.

THE COURT: I understand. But short of that I can't listen to all that. If you are a Judge and determining what to do by way of sentence -- I mean, this is certainly one of the factors to be considered, but as to guilt or innocence, I don't think it is relevant.

Now, another point I wanted to ask about is whether you gentlemen have arranged to describe the 3500 material on the record.

MR. LAWYER: No, we haven't. I can read it.

THE COURT: I don't think you need me. I think you can do it with the reporter. You ought to do that. I know it has been indicated that documents have been made available to the defense, but I think it is good practice to show on the record by exhibit numbers in the 3500 series just exactly what it is that has been turned over.

MR. LAWYER: Yes, sir.

THE COURT: Mr. Appleman, I noted that you wanted to request me to charge someting. I know you are here all day, but I wouldhope that before the close of business tomorrow moring -- We are going to stop at 1:00 o'clock, you remember --

MR. APPLEMAN: Yes, your Honor.

THE COURT: -- tomorrow and if you would get me by 5:00 o'clock in the afternoon any further requests, then I can work on it over the weekend.

MR. APPLEMAN: All right.

THE COURT: Mr. Lawyer, about when do you think the Government will finish now?

MR. LAWYER: Your Honor, I have two more, apart from Mr. Bashi, substantial witnesses, the special agent who will be the single longest witness, Mr. Skolnick, and then I will have a computations expert who will talk about the tax, and any other witness will be brief.

I do have Agent McGuire who will be quite brief and there will be no other patient witnesses.

THE COURT: It is not likely that we will finish it tomorrow.

MR. LAWYER: No, sir.

THE COURT: Mr. Appleman, how long will your case take?

MR. APPLEMAN: We are considering that and we are hoping four hours, half a day to a day. We hope we can finish the defense in either half a day or a day.

THE COURT: Don't you think, then, Mr. Lawyer, that it is likely that the Government will finish sometime early on Monday?

MR. LAWYER: Yes.

THE COURT: And that possibly Mr. Appleman could finish and then we would stop and go to the jury on Tuesday?

MR. LAWYER: I think there is a possibility, your Honor, except Mr. Skolnick, who is the special agent, will be on for quite awhile. Of course, the jury has seen none of the exhibits and I will request the Court to allow us to show them a couple of charts so they will understand them.

I think there is a good chance we will get to the jury on Tuesday.

THE COURT: I don't want to press you. As I have had to explain, unfortunately, to the Doctor, I just have one case backed up right after the other. I misjudged. I had a case set for Monday and I have to keep putting it off a little bit.

All right, we will do the best we can.

[Trial adjourned until November 16, 1973 at 9:30 o'clock a.m.]

Unites States of America

-vs- 73 Cr. 486

Robert L. Wolf

New York, New York
November 16,1973--9:30 a.m.

B37 [Trial resumed; jury present]

THE COURT: All right, Mr. Lawyer.

MR. LAWYER: Your Honor, Mr. Eze Bashi was on the stand yesterday.

THE COURT: All right.

EZE BASHI, called as a witness by the Government, having previously been sworn, testified further as follows:

DIRECT EXAMINATION [CONTINUED]

BY MR. LAWYER:

THE CLERK: Mr. Bashi, you are still under oath.

Q I ask you to look at Government Exhibit 62C for Identification which has been placed before you, Mr. Bashi. Can you identify the documents included in that exhibit?

A Yes, these are checks issued by us in the year 1966.

Q What kind of checks, sir?

A Blue Shield checks.

Q To what doctor were they issued?

A Issued to Robert L. Wolf, M.D.

Q Those are photographic copies or microfilmed copies of the originals; is that right?

A Right, these are microfilmed copies of the originals.

Q Were the microfilms of the originals made in the regular course of the business of United Medical Service?

A Yes, they were.

Q Is it part of the regular course of the business of United Medical Service to make such microfilmed copies?

A Yes, we do.

Q Are the copies which you make, those which are so microfilmed, the business records themselves upon which United Medical Service relies in its own affairs?

A Right.

MR. LAWYER: Your Honor, we offer 62C.

THE COURT: Show it to Mr. Appleman.

MR. APPLEMAN: No objection.

THE COURT: Mark it.

xx [Government Exhibit 62C received in Evidence]

THE COURT: May I take a look at it?

MR. LAWYER: Yes, sir.

THE COURT: All right.

Q Please look at Government Exhibit 62C in Evidence and tell the Court and jury how many separate checks are included in the exhibit, sir?

A Ten checks here.

MR. LAWYER: May the record reflect they all contain dates which fall within the year 1966.

Q I ask you to look at Government Exhibit 63A and 63B for Identification. First, can you identify 63A, sir?

A 63A is a listing of doctor's earnings for the first quarter of 1967.

Q How many?

A In the second -- There is a second quarter, third quarter, fourth quarter of 1967.

Q How many separate checks are included in that exhibit?

A There are four sheets, one for each quarter for the year 1967 pertaining to code No.12051.

Q Does that code number refer to Dr. Wolf?

A That code refers to Dr. Wolf.

Q I ask you now to look at 63B for identification. Can you identify the documents included in that exhibit?

A These are doctor's earnings for the year 1967 for code No.12051.

Q Is that Dr. Wolf's code number?

A Yes.

Q How many separate sheets are included in that exhibit, sir?

A Seven sheets.

THE COURT: And these duplicate 63A, do they?

THE WITNESS: It is for different years.

THE COURT: 63A was 1967?

THE WITNESS: 1967.

THE COURT: And I thought you just told us that 63B was 1967.

THE WITNESS: That is right, but they are different quarters. 63A is the first quarter of 1967.

Q Does 63A refer to a particular type of check?

A One second. Oh, yes. I'll tell you what it is now. 63A refers to checks paid to Dr. Wolf from the Blue Shield Plan, and 63B refers to checks paid to Dr. Wolf from the Medicare Plan.

Q How many separate sheets are included in 63B for identification?

A Seven sheets in 63B.

Q Are 63A and 63B microfilmed business records of computer print-outs?

A Yes.

Q Maintained by United Medical Service?

A Yes.

Q Is it in the normal course of the business of United Medical Service to microfilm such computer print-outs?

A Yes.

Q And are such computer print-outs, meaning 63A and 63B, part of the normal business records relied upon by United Medical Service?

A Yes, they are.

MR. LAWYER: We offer 63A and 63B.

MR. APPLEMAN: No objection.

THE COURT: Mark them.

xx [Government Exhibit 63A and 63B received in Evidence]

Q I ask you to look at Government Exhibit 63C and 63D for Identification which have been placed before you. First, tell us if you know what Government Exhibit 63C for Identification is?

A These are all checks issued by Blue Shield in the year 1967.

Q Thru United Medical Service?

A United Medical Service.

Q What is 63D, if you know?

A 63D are checks issued by United Medical Service also in the year 1967.

Q What type of checks, sir, Blue Shield or Medicare?

A These are all Medicare checks in 63D.

Q And 63C are all Blue Shield checks?

A 63C are all Medicare checks. Even though some of the checks have Blue Shield emblems on top, they are Medicare.

Q How are you able to tell in those cases where they do have Blue Shield on top of them that nevertheless they are Medicare?

A There is a notation on the check that says "For Health Insurance, Social Security Act."

Q Which refers to the Medicare program?

A Yes.

THE COURT: What about 63C?

THE WITNESS: That is what I am talking about.

THE COURT: So that both 63C and 63D are Medicare checks?

THE WITNESS: All Medicare checks.

Q Government Exhibit 63C and 63D are microfilmed copies of original checks, sir?

A Yes.

Q Were the original microfilmed copies made in the normal course of the business of United Medical Service?

A Yes.

Q Is it part of the normal course of the business of United Medical Service to microfilm these original checks?

A Yes.

Q Does United Medical Service itself rely upon the microfilmed records?

A Yes.

MR. LAWYER: We offer 63C and 63D.

MR. APPLEMAN: No objection.

THE COURT: Mark them.

xx [Government Exhibits 63C and 63D received in Evidence]

Q How many separate checks are included in 63C, sir?

A Thirty-six checks.

Q How many separate checks are included in 63D?

A Thirteen.

Q I ask you to look at Government Exhibits 64A and 64B for Identification. First tell us, if you know, what is Government Exhibit 64A for Identification?

A 64A are payments made to code No.12051 from Blue Shield for the year 1968.

Q What is 64B for identification?

A 64B are Medicare checks issued in the year 1968 to code No.12051.

THE COURT: Are they the checks themselves?

THE WITNESS: Yes, sir.

B38 Q Are they the computer print-out records?

A Computer print-out records which has a lot of columns, a lot of information.

THE COURT: They are not copies of the checks themselves that were issued?

THE WITNESS: No, sir.

THE COURT: They are what you described before as earnings?

THE WITNESS: They are earnings, doctor's earnings statements, not the checks.

Q Does the code number on both 64A and 64B for identification refer to Dr. Wolf, sir?

A Yes, sir.

Q Are the documents included in 64A and 64B for identification microfilmed records of computer print-outs?

A Yes.

Q Are those microfilmed records of computer print-outs made in the regular course of the business of UMS?

A They are.

Q Is it part of the normal course of the business of UMS to make such computer print-out records?

A Yes.

Q And are the computer print-out records relied upon by United Medical Service itself in its normal business affairs?

A Yes.

MR. LAWYER: We offer 64A and 64B.

MR. APPLEMAN: Your Honor, I must object to these statements due to the fact that there is nothing on these statements themselves to indicate as to which period they represent. There is just handwriting on the bottom but nothing on the print-out itself.

THE COURT: May I see them?

Mr. Bashi, looking at 64A, how can you tell that this record is the first quarter of 1968?

THE WITNESS: You see here there is M and Y, month and year. That is the column there that says month and year. This year is "8" for 1968 and this is the month, No.1. No.1 is the first month, No.2 is the second month.

THE COURT: Let's stick to 1968. So then this column under "M Y 1-8" indicates that it is January of 1968?

THE WITNESS: Right.

THE COURT: And then the next line is "2-8", February of 1968?

THE WITNESS: Right.

THE COURT: The next line is "1-8," meaning January of 1968?

THE WITNESS: Right.

THE COURT: And there is one line 3-8 for March, 1968?

THE WITNESS: Yes. This is a record of the first quarter of 1968.

THE COURT: How do we know that it is Dr. Wolf? Where is his code number?

THE WITNESS: His code number is here. It is, as you see, 12051.

THE COURT: 12051?

THE WITNESS: Yesterday I testified that 12051 was the code number given to Dr. Wolf.

THE COURT: How do we know that 64B is the first quarter of 1968?

THE WITNESS: Again we go to month and year.

THE COURT: That is M Y?

THE WITNESS: M Y.

THE COURT: All right, Mr. Appleman, do you understand?

MR. APPLEMAN: Yes, your Honor.

THE COURT: Do you want to look at them again?

MR. APPLEMAN: Yes, please.

[Pause]

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them]

xx [Government Exhibits 64A and 64B received in

Evidence]

MR. LAWYER: May the record reflect that 64A contains four separate sheets and that 64B contains seven separate sheets.

May the record also reflect at this time that there is no Government Exhibit 64C.

THE COURT: All right.

Q Mr. Bashi, I have placed before you 64D for identification. Look at that, sir, and tell us whether you can identify the documents included on 64D?

A These are all checks issued by us for Medicare for the years 1968.

Q To whom, sir?

A Issued to Dr. Wolf.

Q Were the separate documents which make-up Government Exhibit 64D microfilmed in the normal course of the business of United Medical Service?

A Yes.

Q Are the documents which are physically included in Government Exhibit 64D for Identification microfilmed documents?

A Yes, they are.

Q Is it part of the normal course of the business of United Medical Service, sir, to make such microfilmed documents?

A Yes.

Q Does United Medical Service itself rely on the microfilmed copies?

A Yes.

MR. LAWYER: We offer 64D.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark them.

xx [Government Exhibit 64D received in Evidence]

Q Mr. Bashi, I am afraid I have to ask you how many documents are included in 64D, sir?

A I will check. One hundred three checks.

Q All dated in what year?

A Dated in 1968.

MR. APPLEMAN: You Honor, may I ask for a recount? I got a different count.

THE COURT: It is in evidence and while it may be helpful to have the witness make the count I think counsel or the Court could count it later. It is in evidence.

THE WITNESS: There are a lot of checks there.

Q I ask you to look at Government Exhibit 65A and 65B for Identification. First tell us whether you are able to identify 65A?

A 65A is a listing of doctor's earnings for code

No.12051 for the year 1969.

Q Is that Dr. Wolf's code number?

A Dr. Wolf's code number.

Q What is Government Exhibit 65B for Identification?

A 65B is a listing of doctor's earnings for code No.12051 for the year 1969.

Q Is that also Dr. Wolf's code number?

A Yes.

Q How many separate sheets are included in 65A for identification?

A Four sheets.

Q How many separate sheets are included in 65B for identification?

A Seven.

Q Are Government Exhibits 65A and 65B for Identification microfilmed copies of computer print-outs belonging tothe United Medical Service?

A Yes.

Q Are the original microfilms, sir, original records of United Medical Service?

A Yes.

Q Is it part of the normal course of the business of United Medical Service to make such microfilmed records?

A Yes.

Q Does United Medical Service itself rely upon the microfilmed records?

A Yes.

MR. LAWYER: We offer 65A and 65B.

MR. APPLEMAN: No objection, sir.

xx [Government Exhibits 65A and 65B received in Evidence]

Q I ask you to look at Government Exhibit 65C and Government Exhibit 65D and tell us what is Government Exhibit 65C, if you know?

A 65C is Blue Shield checks issued in the year 1969 to Robert L. Wolf.

Q What is Government Exhibit 65D for Identification?

A 65D are Medicare checks issued by us to Robert L. Wolf.

Q During what year?

A In the year 1969.

B39 Q Are Government Exhibits 65C and 65D microfilmed copies of original checks; is that correct?

A Yes.

Q Were the microfilmed copies made in the normal course of the business of United Medical Service?

A Yes.

Q Is it part of the normal course of the business of United Medical Service to so microfilm these original checks?

A Yes.

Q Does United Medical Service itself rely upon the microfilmed copies for its own affairs?

A Yes.

MR. LAWYER: We offer 65C and 65D.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark them.

xx [Government Exhibits 65C and 65D received in Evidence]

MR. LAWYER: I don't see any reason to have these counted and I don't propose to have these counted unless --

THE COURT: We can count them ourselves if it becomes necessary.

Q Mr. Bashi, did you personally, that is talking about you yourself, turn those records over to the Government?

A Yes.

Q Prior to doing that did you personally in your capacity as an accountant with United Medical Service go over them and make a total of Dr. Wolf's earnings paid out to United Medical Service programs for the four years 1966 thru 1969 inclusive?

A Yes, I did.

Q Without looking at any piece of paper, sir, are you able to say what those totals were?

A No. I don't know what the totals are.

Q At the time you made the totals did you make a record on a piece of paper?

A Yes, I probably have a copy.

MR. LAWYER: May this be marked 62 for identification?

xx [Government Exhibit 62 marked for Identification]

Q I show you Government Exhibit 62 for Identification, Mr. Bashi. Is that the original record that you made of the totals?

A Yes, this is.

Q Does that refresh your recollection as to the numbers now?

A Yes.

Q If I take the papers away from you can you give the numbers?

A No, I wouldn't know.

MR. LAWYER: We ask that the witness be allowed to read the papers as past recollection recorded.

THE COURT: Any objection?

MR. APPLEMAN: No objection.

Q What did United Medical Service pay to Dr. Wolf in total in 1966?

A In 1966 it paid to the patient $3,814.23. It paid to Dr. --

MR. APPLEMAN: I object to that. That is not responsive to the question which was what did he pay to the Doctor, not to the patient.

THE COURT: Do you want the payments to the patient?

MR. LAWYER: It all went to the Doctor.

MR. APPLEMAN: How can you say it all went to the Doctor?

THE COURT: Because his testimony has been that the only way that the United Medical Service will pay to the member, to the patient is if the patient has already paid the doctor.

Isn't that true, Mr. Bashi?

MR. BASHI: Yes.

MR. APPLEMAN: To his knowledge -- The doctor can sign the form without obtaining payment also.

Would you know if the Doctor signed the form without obtaining payment?

MR. LAWYER: I object at this time. I think that those questions may be appriate at some other time.

THE COURT: Yes. I will admit it. The objection is overruled. Go ahead.

Q Mr. Bashi, would you just read the grand total that insofar as United Medical Service is concerned went to the Doctor either directly or indirectly?

A Okay. For the year 1966, total payments $5,045.03; 1967, $18,136.05; 1968, $20,492.01; 1969 --

MR. APPLEMAN: Your Honor, I have a different total for 1968. He said twenty thousand. I've got nineteen thousand.

THE COURT: You can cross-examine later. It doesn't affect the admissibility of the evidence.

A 1969, $19,253.36. That is it.

Q I'm sorry. What was 1969?

A 1969 is $19,253.30.

MR. LAWYER: I have no more questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mr. Bashi, if a Medicare form, a claim form, a slip is submitted to the company without a doctor's certificate of being paid, would you still pay the patient?

A No, the doctor and the patient have to sign the form.

Q Does a doctor have to certify in that form that he received payment?

A On the Medicare form?

Q Yes.

A No.

Q So, in other words, the Medicare payments could have been made to the patients even though the doctor had not recieved payment?

A Correct, but there is a box over there which says he has received assignment or he doesn't receive assignment. If he checks that box off the check goes to him.

Q If there is no check in the box there is no way of you knowing whether the doctor did or did not receive payment?

A No.

Q Are you aware of the Government's requirement that companies paying individual contractors or doctors, as we have here, payments in excess of $600. that a form 1099 information return must be filed with the company?

A Right.

Q Did Blue Shield file such forms?

A We did.

Q I wish to show you Government Exhibit 62A in Evidence pertaining to the year 1969. Did the Doctor receive in excess of $600. in that year?

A Yes.

Q Was a form 1099 submitted to the Government and to the Doctor?

A Yes.

Q I show you Government Exhibit 63A in Evidence pertaining to the year 1967. Did the Doctor receive in excess of $600. in that year?

A Yes, he did.

Q Was a form 1099 prepared for that year?

A Yes.

MR. LAWYER: I am willing to stipulate that 1099's were filed for every single year, if you want to accept it.

MR. APPLEMAN: Fine.

THE COURT: All right, then, we don't need more testimony about that.

MR. APPLEMAN: I have no further questions, your Honor.

THE COURT: Anything else?

MR. LAWYER: No, sir.

THE COURT: Thank you, Mr. Bashi, you may be excused.

[Witness excused]

MR. LAWYER: The Government calls Special Agent William P. McGuire.

WILLIAM P. MCGUIRE, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q What do you do for a living, sir?

A Special agent with the Intelligence Division, Internal Revenue Service.

Q How long have you been with the Internal Revenue Service?

A As a special agent?

Q Yes.

A For three years.

Q How many years?

A For three years, approximately three years.

Q How long have you been with the Internal Revenue Service altogether?

A Approximately five and a half years.

Q In 1969 what job title did you hold with Internal Revenue?

A I was an Internal Revenue agent at that time.

B40 Q With the Manhattan District?

A The Manhattan District of the Internal Revenue Service.

THE COURT: Mr. McGuire, what is the difference between an Internal Revenue agent and an Internal Revenue special agent?

THE WITNESS: An Internal Revenue agent normally deals with the civil aspects of the case, the auditing aspects of a tax return, whereas the special agent is concerned with the criminal aspects of a case.

Q Do you recognize the name Robert L. Wolf?

A Yes, I do.

Q In your capacity as a Revenue agent in 1969 were you assigned to do an audit of the 1966 income tax returns of Robert L. Wolf?

A Yes, I was.

Q During what period of time did you conduct the audit?

A Well, the case was assigned to me in March of 1969 and the case was taken away from me and reassigned to someone else roughly around January of 1970 -- 1971, January of 1971 that would be.

Q Focus specifically on about December 9, 1969. Did you meet a person by the name of Benjamin Edelstein on that date in connection with the audit?

A Yes, I did.

Q Where did the meeting take place?

A At Mr. Edelstein's office in the Empire State Building.

Q Who is Mr. Edelstein?

A Mr. Edelstein was Mr. Wolf's representative in the case.

Q Did a conversation take place on that occasion between you and Mr. Edelstein?

A Yes, sir.

Q Was anyone else?

A Not to my knowledge.

Q Tell us what Mr. Edelstein said and what you said in substance.

A Well, in substance on this particular date we were going over several aspects of the audit of Mr. Wolf's return. In particular, we were trying to reconcile his bank deposits in the bank account that I knew of in the Chemical Bank with the gross receipts that appeared on the Doctor's Schedule C recording his professional income received during that year.

Q What happened?

A Well, Mr. Edelstein gave me certain figures saying that these figures represented loans from the taxpayer's mother to him, income that he received from W-2's which would be from the hospital he was working at, and this reconciled to his professional income as reported on the return. Not exactly, but to a point where it would be acceptable.

Q Did Mr. Edelstein tell you where he got the information from?

MR. APPLEMAN: I object to that.

THE COURT: I will permit it.

Q Did Mr. Edelstein tell you where he got the information from?

MR. APPLEMAN: I object to that.

THE COURT: I will permit it.

Q Did Mr. Edelstein tell you where he got the information from about the loans that were from Mr. Wolf's mother, according to him?

A During the time of the investigation he would say to me that he would have to get in contact with the taxpayer to get explanations. He never directly came out -- Not to my knowledge or that I recall right now of him actually coming out and saying that he got it from the taxpayer.

Q Did you make a memorandum of the numbers that Mr. Edelstein gave you?

A Yes, I did.

Q He read these numbers off or he showed you a piece of paper; is that right?

A Right.

Q I show you Government Exhibit 516A for Identification and I ask you to look at that document, sir, and tell us whether or not that is the memorandum you made?

A Yes, it is.

Q Did you double-check with Mr. Edelstein as to whether you recorded the information correctly?

A Yes, normal procedure.

Q I have taken the document away from you. Are you able to say what is on it now without looking at it?

A No, I am not.

MR. LAWYER: We offer the document as past recollection recorded.

THE COURT: All right, show it to Mr. Appleman.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

xx [Government Exhibit 516A received in Evidence]

Q Mr. McGuire, I show you 516A now in evidence and ask you to look at it, sir. It contains various abbreviations; is that not correct?

A Yes, it does.

Q Would you read the document to us, including the abbreviations, and tell us what the abbreviations mean?

A The entire document?

Q Yes.

A The documents starts out with the name of the taxpayer, the year involved, my name and the date of the receipt of the information, gross receipts, which is the title I was examining, gross receipts as per Schedule C, the deposits per statements, $49,853.34, loans from mother, no interest charged: April, $1,040.; May, $335.; July, $3,000.; $880. I'm sorry. That would be June. July, $1,755.; August, $940.; September, $1,565.; September, $355.; October, $365.; December, $390.; December, $985. There is a total of $11,610. This deducted from the deposits per statements gives me $38,243.34, less his salary for Mt. Sinai Hospital as per the W-2, which was checked, $8,269.99, gives him a total of $29,973.35, which I accepted.

Q What does the $29,000. etc. figures represent, a total of what?

A That would be his income as reported on the Schedule C, gross receipts.

Q For what year?

A 1966.

THE COURT: What is the figure of gross receipts on the 1966 return?

MR. LAWYER: You want me to look at the return itself?

THE COURT: On that document.

MR. LAWYER: On 516A the total is $38,000. --

THE COURT: Gross receipts.

THE WITNESS: $29,973.35.

THE COURT: And I take it you accepted that because it was less than the gross receipts shown on the return itself?

THE WITNESS: Your Honor, there is a small difference. I was just conducting an audit just to show that these figures were in conformity with what he recorded.

THE COURT: Roughly?

THE WITNESS: Roughly, yes, not the penny, but roughly.

Q You were only concerned with the civil tax liability as distinguished from criminal; is that correct?

A True.

B41 Q Please tell us just what is a Schedule C?

A Schedule C is income a person receives from a sole proprietorship, bascially income from his own business which is not incorporated or in a partnership.

Q Does that mean that he is not employed by someone else?

A Solely employed, self-employed.

Q You get a W-2 form when you work for somebody else, when you have an employer?

A True.

MR. LAWYER: No further questions.

CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mr. McGuire, exactly what time did you transfer from the Revenue agent's office to the special agent's office?

A That would be in January of 1971.

THE COURT: Is that why the case was reassigned from you to another agent?

THE WITNESS: Yes, sir.

Q Mr. McGuire, when you initiated the examination as a Revenue agent of Dr. Wolf's 1966 return, did you receive any prior Revenue agent's report?

A The case was assigned to a Revenue agent prior to myself. His name I don't know. All I received was his chronological history sheet of contact with the representative.

Q Did you also learn the fact that there was a "No Change" issued with regard to that audit?

A Which audit are you talking about?

Q The year 1965.

MR. LAWYER: We are talking about 1966.

THE COURT: I know, but Mr. Appleman is asking him about 1965. I will permit it.

A Normal procedure, if there was a prior audit, would have been to get the audit papers. Personally I don't recall whether they were in the file or not.

Q It is normal procedure when an audit is assigned to an agent and there has been a prior audit that the agent at the time it is assigned to him would obtain the prior Revenue agent's report; is that correct?

A Correct.

Q Did you receive it in this case?

A As I stated, I can't recall.

Q At the time you transferred from the Revenue agent's office to the special agent's office to which Revenue agent was this assigned?

A That I can't recall either. I just gave the case to my supervisor. He took care of the reassignment.

Q At that time was there any referral to the special agent's office?

A Yes, there was.

Q At what point in time was this case referred to the special agent's office?

A Without my notes, without my chronological notes I wouldn't be able to answer that.

Q Let's try and see if we can calculate it. The case was issued to you in March of 1969.

MR. LAWYER: May we inquire whether the agent has this chronological?

THE COURT: Do you, Mr. McGuire?

THE WITNESS: Yes, I do.

THE COURT: Do you want him to look at it?

MR. APPLEMAN: Yes, please.

THE COURT: All right.

THE WITNESS: I would say approximately February of 1970 I was notified by Special Agent Murray to contact him.

Q February of 1970 you were notified by the special agent?

A Special Agent Murray, to contact him. The case wasn't referred. They had the case.

Q The case was not referred?

A Not referred by me. No, they had a case. They started a case up there and they contacted me.

Q Do you know when they started the case up there?

A No, sir, I don't.

Q Now, Mr. McGuire, when you saw Mr. Edelstein on December 9, 1969 was there a power of attorney issued to you, sir?

A I had requested one several times from

Mr. Edelstein.

Q Had received one?

A No, sir.

Q So therefore these representations with regard to loans allegedly made to you by Mr. Edelstein was -- The allegations with regard to the loans made by Mr. Edelstein to the Revenue agent during the course of his audit was not made as a representative?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Did you request that Mr. Edelstein receive anything in writing from the taxpayer with regard to his allegation of loans from his mother?

A Would you repeat that question again?

Q Did you request from Mr. Edelstein that he obtain anything to corroborate his claim that loans were made from the taxpayer's mother?

A I would assume I did.

Q Did you?

A I couldn't say yes. I would just have to say probably. I can't say for sure. Normal procedure would be to require it.

Q That is right. Did you ever obtain anyting from Mr. Edelstein concerning that statement?

A To my knowledge, no.

Q So therefore this claim of loans from the taxpayer's mother was made to you by Mr. Edelstein?

A Yes.

Q You used the word at one point in your testimony investigation. At the time you saw Mr. Edelstine was this an examination or an investigation?

A It was an examination.

Q No investigation?

A No investigation.

THE COURT: I guess you are using words in a technical sense. What is the difference between an examination and an investigation?

THE WITNESS: An examination is basically when you go in and you audit the income tax returns of the taxpayer, whereas an investigation is where you actually go out and have third party contacts for other purposes.

THE COURT: An examination is restricted to the return and talking to the taxpayer of his representative?

THE WITNESS: Correct.

THE COURT: If it moves into the stage of investigation, then you go out to banks and third persons, and so forth?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. APPLEMAN: I think it would be clearly clarified to say an examination --

MR. LAWYER: He can ask the witness.

MR. APPLEMAN: I can ask him.

THE COURT: Yes.

Q An examination is usually or almost always conducted by a Revenue agent with regard to the auditing of a return to determine its accuracy; is that correct, sir?

A To a point, yes.

Q In other words, an examination as that word is used only reflects a determination as to the correct tax liability of the taxpayer; is that correct?

A Unless it is involved to a point, yes. In most instances, when you are dealing with the average taxpayer, yes.

Q At what point would it not be an examination?

A When a referral is made or a special agent becomes involved it becomes an investigation.

Q In other words, at the point that it is determined that a possible criminal violation has arisen, at that point the investigation begins once it is accepted by the Intelligence Division of the Internal Revenue Service; is that correct?

A True.

Q Now that you are a special agent you can answer this: At what point must a taxpayer be advised of his constitutional rights?

MR. LAWYER: Objection.

THE COURT: Sustained.

MR. APPLEMAN: No further questions, your Honor.

THE COURT: Anything else?

MR. LAWYER: No, sir.

THE COURT: All right, thank you, Mr. McGuire. You may be excused.

[Witness excused]

MR. LAWYER: The Government calls Morris Skolnick.

B42

MORRIS SKOLNICK, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LAWYER:

Q Mr. Skolnick, what do you do for a living?

A I am a special agent for the Internal Revenue Service and I work in the Intelligence Division.

Q Do you want to tell us what a special agent is?

A A special agent is assigned to conduct investigations of possible criminal violations of the Internal Revenue Laws.

Q How long have you been with the Internal Revenue Service?

A Twenty-three years.

Q How long have you been a special agent?

A Twenty-three years.

Q In your capacity as an Internal Revenue Service special agent were you assigned to do an investigation of the income tax affairs of a person named Robert Lawrence Wolf?

A Yes, I was.

Q Approximately when was the investigation assigned to you?

A Sometime in the early part of the year 1970.

Q To what years did your investigation pertain?

A The years 1966, 1967, 1968 and 1969.

Q Does that mean the calendar years beginning on January 1 and ending on December 31 of each year?

A Yes, it does.

Q I ask you to look at Government Exhibits 1, 2, 3 and 4 in Evidence which purport to be the Federal individual tax returns of Robert Lawrence Wolf for 1966 thru 1969 inclusive. Look at those returns and tell us whether those are the returns with respect to which your investigation was aimed?

A Yes, they are.

Q I show you Government Exhibit 6 for Identification. Can you identify that, sir?

A Yes, this is the initial contact letter with Dr. Robert Lawrence Wolf which I sent to him on September 17, 1970.

Q Was such a letter or some other form of contact normally made by Internal Revenue Service special agent when they start investigations?

A Yes, it is.

MR. APPLEMAN: No objection.

MR. LAWYER: I offer Government Exhibit 6.

THE COURT: All right, mark it.

xx [Government Exhibit 6 received in Evidence]

MR. LAWYER: May I read Government Exhibit 6, your Honor?

THE COURT: You may.

[Mr. Lawyer read from Government Exhibit 6]

Q Who is anyone contacted you, sir, after that letter went out?

A A certified public accountant by the name of Benjamin Edelstein contacted me.

Q Did you ever get to meet Mr. Edelstein?

A Yes, I did.

Q Approximately when did you first meet him?

A Sometime in October or November of the year 1970.

Q Was this in connection with the investigation of tax returns of Dr. Wolf?

A That is right, yes.

Q I direct your attention specifically now, sir, to the date of December 1, 1970. Did you have a conversation with Dr. Wolf himself by telephone on that date?

A Yes, I did.

Q Who initiated the telephone call?

A I did.

Q How do you know you talked to Dr. Wolf?

A I called his office and the person I spoke to on the telephone identified himself as Dr. Wolf.

Q What did you say on the phone and what did the person on the other end of the phone say?

MR. APPLEMAN: I object.

THE COURT: Overruled.

Q What did you say and what did the person that identified himself as Dr. Wolf say?

A I gave my name to Dr. Wolf and I told him I was a special agent with the Intelligence Division and that I was conducting the investigation concerning his tax returns and that I had been contacted by Mr. Benjamin Edelstein who told me that he was to represent him and that to that date

I had not received a proper power of attorney from Mr. Edelstein and I wanted to know whether Mr. Edelstein was going to represent him.

Dr. Wolf told me that Mr. Edelstein was to represent him and that several weeks ago he had signed a power of attorney and mailed it to Mr. Edelstein.

Q Did you subsequently receive a power of attorney?

A Yes, I did.

Q I show you Government Exhibit 16 in Evidence. Is that the power of attorney that you received?

A Yes, it is.

Q What date did you receive it?

A December 10, 1970.

Q As a general practice with the Internal REvenue Service, when is it required that a power of attorney be filed?

A When a taxpayer does not desire to appear before the Internal Revenue Service and handles his own tax matters he appoints someone to do it for him and we require a power of attorney to deal with the appointed individual.

Q So you would not deal with the appointed individual until you receive the power of attorney?

A That is correct.

Q Is that person who is appointed also referred to as a taxpayer's representative?

A That is right.

Q Focus your attention specifically on the date of March 11, 1971. Did you meet with Mr. Edelstein on that date?

A Yes, I did meet with him.

Q Where?

A At his office.

Q Was there a person by the name of Thomas J. LaGreca, Jr. present?

A Yes.

Q Did you have a conversation with Mr. Edelstein on that date, sir?

A Yes, I did.

Q Did Mr. LaGreca himself take part in the conversation?

A No, he did not.

Q Who else was present besides the three of you?

A There wasn't anyone else present.

THE COURT: Who is Mr. LaGreca?

THE WITNESS: Thomas LaGreca is a special agent with the Intelligence Division.

THE COURT: You went with you?

THE WITNESS: That is right, as a witness.

Q What did you say and what did Mr. Edelstein say and tell us anything that happened during the course of such conversation?

A I had a number of conversations with Mr. Edelstein, conferences, and also telephone conversations and I would appreciate if I could refresh my memory by looking at a copy of my report, just getting the highlights of it.

Q You mean with regard to that specific date?

A That is right, just with regard to the date.

MR. LAWYER: Your Honor, may he refer to that?

THE COURT: Yes, he may. Do you have the report?

THE WITNESS: Yes.

THE COURT: Of course, Mr. Appleman, it will be made available to you too.

Q What are you using to refresh your recollection?

A Just the highlights of my conversation with Edelstein at that time just to get an idea of what the conversation was to distinguish it from other conversations I had with him.

Q Are you using your special agent's report?

A That is right, the special agent's, right.

MR. LAWYER: May the record reflect that the special agent's report has been marked as 3501. It has been turned over to Mr. Appleman already.

THE COURT: All right.

Q Did you refresh your recollection as to that date, sir?

A Yes, I have.

Q Focus on your meeting of March 11, 1970 with Mr. Edelstein. Tell us what was said and by whom and tell us anything that may have happened during the course of the conversation.

A I asked Mr. Edelstein where he got his figures for Dr. Wolf's income that he put on Dr. Wolf's tax returns and he told me that all income figures on the tax returns were obtained from Dr. Wolf.

I also asked him if he had any work papers in connection with his preparation of Dr. Wolf's tax returns for the years 1966, 1967, 1968 and 1969 and he said he did have some work papers and he showed me some -- I believe it was four file folders which he said contained these work papers.

He also showed me a letter which was addressed to him and he said that Dr. Wolf had sent him this letter and it related to his income tax returns and I believe it contained information relative to reporting all his income on his returns.

B43 Q I show you Government Exhibit 15 in Evidence. Is that the letter to which you are referring, sir?

A Yes, it is.

Q Mr. Skolnick, I ask you to take a few moments and look for yourself thru Government Exhibits 11, 12, 13 and 14 in Evidence and all of the subsidiary documents included in those exhibits and tell us whether or not Mr. Edelstein showed you those papers on that date.

Did he show you Government Exhibit 11A?

A Right.

Q Did he show you Exhibit 11B?

A Right.

Q Government Exhibit 11C?

A That I do not believe I saw, that particular schedule.

Q Were you shown 11D?

A Yes.

Q Were you shown Government Exhibit 12, sir?

A Yes, I was.

Q Government Exhibit 12A?

A Yes, I saw this.

Q Were you shown 12B?

A Yes.

Q Were you shown Government Exhibit 13A?

A Yes, I was.

Q Were you shown Government Exhibit 13B?

A Yes.

Q Were you shown Government Exhibit 14A?

A Yes, I was shown that.

Q Were you shown Government Exhibit 14B?

A Yes.

Q What other conversation took place, sir?

A I asked Mr. Edelstein if Dr. Wolf had any foreign bank accounts and he said that he did not.

Q Do you remember his wording?

A I believe he said that Dr. Wolf had no foreign bank accounts, no Swiss accounts or "stuff like that".

Q I direct your attention now --

THE COURT: Excuse me, Mr. Skolnick. How did you come to ask a question like that?

THE WITNESS: I had indications that there were some transactions with a foreign bank at the time.

THE COURT: You already had something that made you suspect that he may have had it?

THE WITNESS: I did, your Honor.

THE COURT: I understand. All right.

Q I turn now to April 8, 1971. Did you and Special Agent LaGreca meet with Mr. Edelstein again on that date?

A Yes, I did.

Q Where was that meeting, sir?

A At Mr. Edelstein's office in the Empire State Building.

Q Did a conversation take place on that occasion?

A Yes.

Q Who else was present besides Mr. Edelstein, Mr. LaGreca and you?

A No one else was present.

Q Tell us what was said and by whom, sir.

A May I again refer to my report to refresh my recollection, if I may?

Q You may.

Did you refresh your recollection?

A Yes.

Q Will you tell us what the conversation was, sir?

A I asked Mr. Edelstein for the work papers that he had available that were used in the preparation of Dr. Wolf's tax returns.

Q Are those the work papers that you just saw that he showed you?

A Yes.

And I also asked Mr. Edelstein again about the foreign bank account and he once more said that Dr. Wolf didn't have any.

I also asked him if Dr. Wolf had any other checking accounts in addition to the Chemical Bank checking account since the year 1966 and he told me that there were no other bank accounts, checking accounts.

I told Mr. Edelstein that I would like to be certain about the information he was giving me and he said that he would call the taxpayer, Dr. Wolf, and ask him about it. I told Mr. Edelstein that he is to understand that Dr. Wolf had constitutional rights and did not have to provide us with any information, and Mr. Edelstein indicated to me that he understood about the taxpayer's constitutional rights and that there was nothing to worry about.

I then saw him dial a number and he -- someone got on the phone on the other end and I heard him say that "Will you please have Dr. Wolf call me as soon as he can." and he hung up.

Shortly thereafter the telephone rang and Mr. Edelstein answered the phone and he told me that Dr. Wolf was on the other end of the line. I then heard him say over the telephone that -- to who he said was Dr. Wolf that there were special agents from the Intelligence Division with him in his office and that he wanted to ask him some information. I heard him specifically ask Dr. Wolf if he had any foreign bank accounts or any other accounts and after he hung up he told me, that is, Mr. Edelstein --

MR. APPLEMAN: Objection.

THE COURT: Overruled.

A -- Mr. Edelstein told me that Dr. Wolf said that he had no foreign bank accounts and never had any.

Q Was that the substance of the conversation?

A I believe that is the substance of the conversation.

Q I direct your attention, Agent Skolnick, specifically to May 12, 1971. Did you and Agent LaGreca again meet with Mr. Edelstein at Mr. Edelstein's office?

A Yes.

Q What happened at that meeting? Tell us any conversations and who said what.

A May I once again refer to my report to refresh my recollection?

Q Yes, sir.

Have you refreshed your recollection, sir?

A Yes, I have.

Q Was anyone else present besides you, Mr. LaGreca and Mr. Edelstein?

A No.

Q Tell us who said what during the conversation that took place.

A I once again pressed Mr. Edelstein as to more specific information on whether Dr. Wolf had any foreign bank account and he again told me that Dr. Wolf did not have such an account and that he had no -- nor did he have any other checking accounts and --

Q He specifically said checking accounts; is that correct?

A Yes. He also said that Dr. Wolf did not have any account in this country thru which he sent any funds, transferred any funds to a foreign bank account. I believe that was the substance of it.

[Mr. Fruchtman was present in the courtroom at this point]

Q Did Mr. Edelstein provide you with copies of the work papers at this meeting?

A Yes.

Q Was this the first time that you got copies of the work papers, referring to Exhibits 11, 12, 13 and 14?

A Yes.

Q Directing your attention now specifically to May 13, 1971, did you now for the fourth time visit Mr. Edelstein's office?

A Yes, I did.

Q Was Mr. LaGreca with you?

A He was.

Q Did you get to meet with Mr. Edelstein?

A Yes, we did.

Q Did you have a conversation with Mr. Edelstein?

A Yes.

Q Who else was present besides the three of you?

A There wasn't anyone present besides the three of us. I would like to mention when I do answer, you know, say that, this was his office and sometimes a person would walk into his office and out, but there was no one who participated in the conversations.

Q Tell us what conversation took place on May 13, 1971 and tell us who said what.

A I would like to once again refresh my recollection, if I may, from my report.

B44 MR. APPLEMAN: Your Honor, may I have a blanket objection to all of the conversations between Mr. Edelstein and Mr. Skolnick?

THE COURT: Yes. All right.

MR. APPLEMAN: It is not binding on the defendant.

THE COURT: I understand.

Q Have you refreshed your recollection?

A Yes, I have.

Q Tell us what the conversation was, who said what?

A Once again I pressed him for more information on foreign bank accounts and he said that since 1966 Dr. Wolf had no foreign bank accounts and that the Doctor -- He had specifically asked this question of the Doctor and he was told by the Doctor that he did not have it and that was his final answer on the subject.

He said that, I believe -- I know I told him at that time that the Internal Revenue Service definitely had information that Dr. Wolf had a foreign bank account and Mr. Edelstein said that he wanted it clearly understood that he was not holding back any information from the Internal Revenue Service; that he was giving us whatever information Dr. Wolf was giving him.

I believe that was the substance of the conversation at that time.

Q Let's go now to July 21, 1971. Did you speak by telephone with the CPA, Mr. Edelstein, on that day, sir?

A Yes, I did.

Q Who initiated the phone call?

A I would like to refresh my recollection on it, if I may?

Q Yes, sir.

A I initiated the telephone conversation on May 21.

Q No, sir, July 21. I'm sorry.

A I mean July 21.

Q What did you say and what did Mr. Edelstein say?

A I told Mr. Edelstein that I wanted him to know now that we had information that Dr. Wolf had an account with the Barclays Bank.

Q What Barclays Bank?

A In the United States, and that he also had a foreign bank account with the Union Bank of Switzerland. Mr. Edelstein said that he did not know this and that he wanted it understood that he did not withhold this information from the Internal Revenue Service, and that was about all that was said during that conversation.

Q Did there come a time when Mr. Edelstein said that he had found out about the bank account?

A Yes. I believe it was two days later that Mr. Edelstein telephoned me and he told me that Dr. Wolf now admitted that he had accounts with both Barclays Bank and with the Union Bank of Switzerland and he said that Dr. Wolf also told him that the only moneys that were deposited in the Barclays Bank account were the proceeds from the sale of securities and that Dr. Wolf got very -- Dr. Wolf said to him that he had reported all his income and that he would stake his life, you know, his life on that. You know, that all his income had been reported. And I asked him what proof he had of the contents of these deposits in the Barclays account and Mr. Edelstein told me that he would prove to me that what Dr. Wolf had told him was the truth.

Q When did you get that proof that this was true?

A No information was ever submitted to me on that.

Q Apart from your visits with Mr. Edelstein, your conversations with him, what else did you do in general in your investigations to obtain information without going into any conversations?

A I visited many banks in the vicinity of the taxpayer's residence and his professional office. I went to different brokerage firms. I went to the International Telephone & Telegraph Corporation where he had rendered services. I went to the United Medical Service, Incorporated. I made contact of leads of patients developed during my investigation. I went to various other, you know, third parties and financial sources to develop the information.

Q Did you obtain various records as you went about your investigation?

A Yes, I did.

Q Just tell us the types of records that you obtained.

A Well, I obtained bank statements, deposit tickets, withdrawal slips from bank accounts, brokerage statements, information from patients as to payments made.

Q Did you get checks?

A Cancelled checks and various other sundry, you know, data relative to this situation.

Q Over how long a period did your investigation last?

A Approximately two and a half years.

Q After you compiled the various information, after you spoke to various people and institutions, did you make your own determination as to what you, a United States special agent, deemed Dr. Wolf's actual gross income to be for 1966 thru 1969?

A Yes, I did.

Q What is the name of the method that you used?

A The bank deposit method.

Q Tell the Court and jury what the bank deposits method is?

A The bank deposit method is that if a taxpayer is engaged in an income producing profession and if he regularly makes deposits in his own bank account or in bank accounts under his control and if the items that are taxable as to his profession such as redeposits or transfers from other bank accounts or brokerage accounts and the deposits are not attributable to such things as gifts, inheritances, loans, bank credits, the deposits then would be income.

Q Did you prepare various summaries, schedules and charts of all the information, documents, etc. that you compiled?

A Yes, I did.

Q You have already stated, have you not, that you started out by looking at the taxpayer's returns, that is, Government Exhibits 1 thru 4; is that correct?

A That is correct.

Q And you also had copies of the work papers that Mr. Edelstein showed to you, specifically the documents included in Government Exhibits 11 thru 14; is that correct?

A That is right.

Q I show you Government Exhibits 21, 21A, 21B, 21C in Evidence. Did you consider those exhibits in preparing your analysis, sir?

A Yes, I did.

Q I show you Government Exhibits 24, 25, 26 and 27, sir. Please look at each exhibit and tell us whether or not you considered those in your analysis?

A Yes, I did.

Q I show you Government Exhibit 524 for Identification. What is 524, sir?

A Government Exhibit 524 is an analysis of the deposits shown in Government Exhibit 24 on the Chemical Bank-New York Trust Company checking account No.010-250271 in the name of Dr. Robert L. Wolf.

Q Did you prepare this analysis sheet yourself, sir, or was it prepared at your direction, either way?

A This analysis sheet was prepared under my direction.

Q Did you check it out when it was prepared?

A Yes, I did.

Q Did you check it against all the individual documents included in Government Exhibit 24 in Evidence?

A Yes, I did.

Q Did you make a listing of every single deposit item in Government Exhibit 24 on your analysis sheet, which is Government Exhibit 524?

A Yes, I did.

B45 Q Was that check by check, sir?

A Each one, yes.

THE COURT: What count is that, Mr. Skolnick? Is that the Chemical Bank checking account?

THE WITNESS: Chemical Bank checking account, yes, your Honor.

Q I show you Government Exhibit 525 for Identification.

MR. LAWYER: Does your Honor want me to withdraw the question and take a break?

THE COURT: Are you going to offer 524?

MR. LAWYER: I am going to offer them in groups, your Honor. There are many of them.

THE COURT: Has Mr. Appleman seen them?

MR. LAWYER: No, sir.

THE COURT: Maybe you could make 525 available to Mr. Appleman during the recess.

MR. LAWYER: That will save us about five seconds. Yes.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, you may retire and we will take our break.

[The jury left the courtroom]

THE COURT: Mr. Skolnick, you can be excused during the recess, if you like.

THE WITNESS: Thank you, sir.

THE COURT: All right, Mr. Clerk, we will take a few minutes recess.

[Recess]

[Jury present]

Q Mr. Skolnick, I show you Government Exhibits 525, 526 and 527 for Identification. Look at each one and tell us whether or not you are able to identify each exhibit, sir. Yes or no as to 525.

A As to Government Exhibit 525, it is a compilation of the deposit tickets contained in Government Exhibit 25 and it is an analysis of the deposits at the Chemical Bank in the name of Dr. Robert L. Wolf. That is the checking account in this bank.

Q For what year?

A For the year 1967.

THE COURT: Mr. Skolnick, what is the difference between 524 and 525?

A 524 was an analysis sheet of the Chemical Bank checking account.

Q For the year --

THE WITNESS: Government Exhibit 524, your Honor, was for the year 1966.

THE COURT: And 525 is for what year?

THE WITNESS: The year 1967.

THE COURT: It is the same kind of analysis as 524 except for the following year?

THE WITNESS: That is correct, your Honor.

THE COURT: All right.

Q How many separate analysis charts are included in Government Exhibit 524 for Identification?

A There are twenty-one pages in Government Exhibit 524.

Q How many separate analysis sheets are included in Government Exhibit 525?

A There are twelve sheets.

Q Tell us now whether you are able to identify

Government Exhibit 526 for Identification?

A 526 is a compilation of the deposit tickets contained in Government Exhibit No.26 of the deposits made in the Chemical Bank checking account for the year 1968.

Q How many separate analysis charts are included in Government Exhibit 526 for Identification?

A There are ten pages of analysis.

Q Tell us whether or not you are able to identify Government Exhibit 527 for Identification?

A Government Exhibit 527 is a compilation of the deposit tickets in Government Exhibit 27 and it refers to the Chemical Bank checking account in the name of Dr. Wolf for the year 1969 and consists of eleven pages.

MR. LAWYER: Your Honor, we offer Government Exhibit 524, 525 and 526. May the record reflect that defense counsel received copies of these documents earlier.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

xx [Government Exhibits 524, 525, 526 and 527 received in Evidence]

Q I show you Government Exhibits 528, 529, 530, 531, 532 and 533 for Identification. Take a moment and go over yourself each one and tell us whether or not you recognize all of them.

A Yes, I recognize all the Government exhibits.

Q I now add to that group, sir, Government Exhibit 534 and 535 for Identification. Do you recognize both of those exhibits?

A Yes, I do.

Q Do each of the exhibits which I have just shown you beginning with 528 and concluding with Government Exhibit 535 inclusive for Identification refer to schedules or summaries or charts that you have made with respect to Dr. Wolf's account at the Barclays Bank of New York?

A Yes, they do.

Q Tell us, sir, what then is Government Exhibit 528 for Identification?

A Government Exhibit 528 is an analysis of the deposits to that checking account in the year 1968 and the information therein came from Government Exhibit 41A.

Q What, sir, is Government Exhibit 529 for Identification?

A Government Exhibit 529 is the analysis of deposits to the Barclays checking account in 1969 and relates to Government Exhibit 42A; that is, the deposits in that account.

Q What year?

A The year 1969.

Q How many separate sheets are included in Government Exhibit 529?

A There are five separate sheets in Exhibit 529.

Q Let's go back to Government Exhibit 528 for Identification. How many separate charts or sheets are included in that exhibit?

A Just one sheet.

Q What is Government Exhibit 530 for Identification?

A Government Exhibit 530 is an analysis of the deposits to the Barclays checking account consisting of two pages which were made on January the 7, 1970 and is supported by the Government Exhibit 48B.

Q What is Government Exhibit 531 for Identification?

A Government Exhibit 531 for Identification consists of a listing of checks payable to Dr. Wolf which were deposited in the Barclays Bank on May 14, 1969 and consists of two pages and relates to Government Exhibit 43.

Q What is Government Exhibit 532 for Identification?

A Government Exhibit 532 consists of two pages and concerns the checks payable to Dr. Wolf which were deposited in the Barclays Bank account on June 11, 1969 and relates to Government Exhibit 44.

Q When you say these schedules, these charts relate to a Government exhibit, sir, have you caused the numbers of the Government exhibits to be physically noted on the face of your schedules themselves?

A Yes, they are so noted.

Q What is Government Exhibit 533 for Identification?

A Government Exhibit 533 for Identification consists of the checks, a listing of the checks payable to Dr. Wolf which were deposited in the Barclays Bank checking account on June 18, 1969 and relates to Government Exhibit 45. This exhibit consists of only one page.

Q What is Government Exhibit 534 for Identification?

A Government Exhibit 534, consisting of two pages, concerns the checks payable to Dr. Wolf which were deposited in the Barclays Bank checking account on July 30, 1969 and relates to Government Exhibit 46.

Q What is Government Exhibit 535 for Identification?

A Government Exhibit 535, consisting of four pages, relates to checks payable to Dr. Wolf which were deposited in the Barclays Bank on October 2, 1969 and has reference to the Government Exhibit No.47.

MR. LAWYER: We offer Government Exhibits 528 thru 535 inclusive.

MR. APPLEMAN: Your Honor, objection is made specifically to some of the headings on some of these exhibits which are presently being offered for evidence.

B46 MR. LAWYER: Are there any of them not objected to?

MR. APPLEMAN: Yes, your Honor.

THE COURT: All right, let's deal with them. They can be marked and then we can go on to them.

MR. APPLEMAN: 531, no objection.

THE COURT: All right, without objection that will be received.

xx [Government Exhibit 531 received in Evidence]

MR. APPLEMAN: 532, no objection.

THE COURT: All right.

xx [Government Exhibit 532 received in Evidence]

MR. APPLEMAN: 533.

THE COURT: All right.

xx [Government Exhibit 533 received in Evidence]

MR. APPLEMAN: 534.

THE COURT: All right.

xx [Government Exhibit 534 receive in Evidence]

MR. APPLEMAN: 535, no objection.

THE COURT: All right.

xx [Government Exhibit 535 received in Evidence]

THE COURT: That leaves three, 528, 529 and 530. Let's take 528.

MR. APPLEMAN: As to 528, we have a column headed

"Professional Income, Unidentified and Identified." I think there is a conclusion that this is income which is identified.

THE COURT: All right, let me see it.

MR. APPLEMAN: They all have the same notation, your Honor.

BY THE COURT:

Q Mr. Skolnick, I show you Exhibit 528 for Identification. We have got a heading here "Professional Income," and then two columns "Unidentified and Identified."

A Right.

Q To what do those words refer?

A They identified items are those in which we have specific names as to the source of the fee income. The others we find are similar in amount to fees that are normally received by a doctor as stated here in the -- under date of December 11, 1968 "Unidentified, $25.," one item $15., $50., which are customary fees, as I say, a doctor receives. We have endeavored to eliminate any information that the investigation disclosed as to deposits of a nontaxable source and those which we have not eliminated are deemed to be professional income.

Q But before we get to that, evidently in making up this sheet, Government Exhibit 528 for Identification, on some deposit tickets you have a check for $25?

A That is right.

Q You mean according to the deposit ticket?

A That is right.

Q But you didn't see the check itself?

A That is correct.

Q Whereas in the case of an item here of $110. which you classify as identified, evidently there is some check with the name of the patient?

A That is correct, your Honor.

Q And are these checks in evidence in the identified column?

A Yes, they would be in evidence.

Q You mean over here where you have got the word "Witness" you have got the payee of the checks?

A That is right, yes.

THE COURT: I think with that explanation, Mr. Appleman, I think I can and should admit it.

Do you have the same objection to the other three?

MR. APPLEMAN: Yes, your Honor.

THE COURT: Of course you can cross-examine. Feel free about it.

MR. APPLEMAN: Wouldn't a better title have been "Unexplained Deposits" rather than this? These are deposits which are unexplained. This is not professional income.

There is no basis to deem this as income.

MR. LAWYER: That is argument for the jury. That is not true.

THE COURT: I am not passing on the weight of it and you can certainly make that argument to the jury. It may be unidentified really means unexplained, perhaps, but I think it is admissible. I will overrule the objection.

All right, mark them, Mr. Clerk, 528, 529 and 530.

xx [Government Exhibits 528, 529 and 530 receive in Evidence]

MR. APPLEMAN: If the Court pleases, may I note the same objection with regard to 524, 525, 527 and 526.

THE COURT: All right, I will make the same ruling.

Q I show you Government Exhibit 537 and 538 for Identification. Do you recognize Government Exhibit 537, sir?

A Yes, I do.

Q Do you recognize Government Exhibit 538?

A Yes, I do.

Q What is Government Exhibit 537 for Identification?

A Government Exhibit 537 is an analysis of the deposits in the Chemical Bank savings account in the name of Dr. Robert L. Wolf. It covers the year 1966.

Q What savings account is that?

A The savings account with the Chemical Bank in the name of Dr. Robert L. Wolf, and it consists of one page and relates to Government Exhibit 32.

Q What is Government Exhibit 538 for Identification?

A Government Exhibit 538, consisting of two pages, consists of an analysis of deposits of the Chemical Bank savings account in the name of Dr.Wolf.

Q For what year?

A It covers the years 1967, 1968 and 1969. It consists of two pages and relates to Government Exhibit 3538.

MR. LAWYER: Your Honor, that exhibit is mismarked. I'm sorry. It does not relate to Government Exhibit 3538. It is Government Exhibit 538.

Q I again, sir, show you Government Exhibit 538 for Identification and I ask you to compare Government Exhibit 538 for Identification with Government Exhibits 33, 34 and 35 in Evidence and tell us whether or not 538 refers to Government Exhibits 33, 34 and 35?

A Government Exhibit 538 refers to Government Exhibits 33, 34 and 35.

Q That has been changed to be so reflected on Government Exhibit 538 itself?

A Yes, it has.

MR. LAWYER: We offer Government Exhibit 537 and 538.

MR. APPLEMAN: I make the same objections with regard to these schedules as I made with regard to the prior one, that is as to the captions.

THE COURT: Is it the same legend?

MR. APPLEMAN: Same legend. It says "As to professional income."

THE COURT: Same ruling. Mark them.

xx [Government Exhibits 537 and 538 received in Evidence]

Q I show you Government Exhibit 539 and 540 for Identification. First, are you able to identify Government Exhibit 539 for Identification?

A Yes.

Q What is it?

A Government Exhibit 539 is an analysis of deposits in the Bankers Trust Company savings account in the name of Dr. Wolf consisting of two pages and covering the years 1966, 1967 and 1969, and it relates to Government Exhibit 51.

Q Two pages?

A That is right.

B47 Q What is Government Exhibit 540 for Identification?

A Government Exhibit 540 consists of an analysis of deposits made in the Bank of New York savings account in the name of Dr. Robert L. Wolf and covers the year 1969. It consists of one page and relates to Government Exhibit 56A.

MR. LAWYER: We offer 539 and 540.

MR. APPLEMAN: The same objections are raised with reference to 539 and 540.

THE COURT: Same ruling. All right, mark them, Mr. Clerk.

xx [Government Exhibit 539 and 540 received in Evidence]

Q I show you Government Exhibits 549, 550, 551 and 552. Are you able to identify Government Exhibit 549, first of all?

A Yes.

Q What is it?

A Government Exhibit 549 is the analysis of professional fees of Dr. Robert Wolf representing payments made to him in cash and checks which he received that were cashed, and it covers the year 1966 and relates to Government Exhibit No.7.

Q What is Government Exhibit No.7 for Identification?
What is Government Exhibit 550?

THE COURT: You asked about 7 for identification. Do you want to withdraw that?

MR. LAWYER: Yes.

THE COURT: All right.

MR. LAWYER: I wish to withdraw altogether and have stricken all questions pertaining to Government Exhibit 549 as of this moment. I will reoffer it, the point being that Government Exhibit 7 is not yet in evidence.

Q I show you Government Exhibit 550. What is it, sir?

A Government Exhibit 550 is an analysis of professional fees of Dr. Robert L. Wolf representing payments to him in cash and checks payable to him which were cashed. This exhibit consists of two pages and covers the year 1967 and relates to Government Exhibits 106, 117, 118 and 121.

Q What is Government Exhibit 551 for Identification?

A Government Exhibit 551, consisting of three pages, relates to analysis of professional fees of Dr. Wolf representing payments to him in cash and and checks paid to him which were cashed, and this exhibit relates to Government Exhibits 71B, 107, 108, 114, 117, 118, 120 and 121.

Q What is Government Exhibit 552?

A Government Exhibit 552 is an analysis of professional fees of Dr. Wolf representing payments in cash and checks issued to him which were cashed. It covers the year 1969 and consists of one page.

Q I show you again Government Exhibit 552 for

Identification and ask you to look at Government Exhibit 65D in Evidence and tell us whether or not 552 refers in part to 65D in evidence?

A Yes, it does.

Q I show you also Government Exhibits 108 and 116 in Evidence. I ask you to compare them with your summary, that is Government Exhibit 552, and tell us whether or not 552 refers in part to 108 and 116?

A Yes, it does.

Q As to Government Exhibit 552, has it the corresponding number noted on it, sir; that is, does Government Exhibit 552 now also contain references to 65D, 108 and 116?

A That is right.

MR. LAWYER: We offer 550, 551 and 552.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark them.

xx [Government Exhibits 550, 551 and 552 received in Evidence]

MR. LAWYER: May this document be marked as Government Exhibit 5, please, for identification.

xx [Government Exhibit 5 marked for Identification]

THE COURT: Do you need an easel, Mr. Lawyer?

MR. LAWYER: I can use the board. No, I guess I need an easel.

THE COURT: Maybe during the luncheon recess we can have it put up.

MR. LAWYER: Today is Friday. Do we need a luncheon recess?

THE COURT: No, I am going to excuse the jury.

Q I show you Government Exhibit 5 for Identification. Can you tell us what that is, sir?

A Government Exhibit 5 is a compilation of data that is listed on Dr. Wolf's income tax returns for the years 1966, 1967, 1968 and 1969.

Q And by his returns for those years you are referring to Government Exhibits 1, 2, 3 and 4 in Evidence which you have already seen?

A That is correct.

Q Who prepared the chart, Government Exhibit 5 for Identification, sir?

A I did.

Q Did you double-check it for accuracy against the returns themselves?

A I did.

MR. LAWYER: Your Honor, we are going to offer Government Exhibit 5 simply as an aid to the jury which is easier to follow, we submit, than the returns.

THE COURT: All right.

MR. LAWYER: I will give defense counsel a copy.

THE COURT: Any objection?

MR. APPLEMAN: Assuming that the figures are correct, and I do not wish to take up the Court's time to check that, I have no objection.

THE COURT: Subject to correction, and if any are found to be incorrect we can make the corrections.

All right, mark it, Mr. Clerk, to be admitted.

xx [Government Exhibit 5 received in Evidence]

THE COURT: I am not sure which is being received - which is being offered.

MR. LAWYER: Let me ask him a couple of questions.

THE COURT: Yes.

Q Mr. Skolnick, is this chart I am holding simply a photographic copy of the much smaller documents you have before you?

A Yes, it is an enlargement of the information I compiled.

Q Simply a blow-up, sir; is that correct?

A A blow-up, yes.

MR. LAWYER: For purposes of the record, obviously this won't fit very well. That is a blow-up. However --

THE COURT: Why don't we mark the paper as Exhibit 5 and the blow-up as Exhibit 5A.

MR. LAWYER: Yes, sir.

THE COURT: All right, Mr. Clerk, would you be good enough to do that.

MR. FRUCHTMAN: Just a blow-up of this?

MR. LAWYER: That is all it is.

THE COURT: All right.

And between now and Monday morning we will try to get an easel.

xx [Government Exhibit 5A received in Evidence]

Q Mr. Skolnick, what do you mean by abstracted data at the top of the blow-up, the third line, sir?

A It is the important and pertinent information that is contained in the tax returns, in those four tax returns filed by Dr. Wolf.

Q And all the information on Government Exhibit 5 was lifted entirely from the returns with no changes?

A No changes, that is correct.

THE COURT: Do you have enough copies of Exhibit 5 for the jury?

MR. LAWYER: I think I do.

THE COURT: If you have thirteen copies, that would be all right. We need thirteen copies. It might be easier in these few minutes than dealing with the large chart.

MR. LAWYER: Yes, we do.

THE COURT: Then as you question Mr. Skolnick I think it would be easier for the jury to follow it with these copies.

MR. LAWYER: I agree, your Honor.

Q Mr. Skolnick, I direct your attention to the years across the top, 1966, 1967, 1968 and 1969. That simply, sir, refers to the tax years on the returns; is that correct?

A That is correct.

Q "Gross Receipts as Medical Doctor," sir, which is the first horizontal line across, refers to what?

A That refers to Dr. Wolf's gross receipts from his private practice as a physician as stated in Schedule C of the income tax returns that are filed by him.

B48 Q That doesn't include any of the salary he may have received from the hospital; is that correct?

A That is correct.

Q And it does refer just to his office income; is that correct?

A That is so.

Q Would you go down to the fourth horizontal line, sir, where it says "Wages, Mt.Sinai Hospital"? Does that refer to what would appear on a W-2 Form that is from an employer?

A That is correct.

Q And what would interest income refer to?

A That would be income from savings accounts or -- Well, in this instance I would have to look at his returns to be specific as to the source of the income, but it would refer to interest on savings accounts, interest on the cashing of E Bonds and other forms of interest income.

THE COURT: But these figures for interest income like all other figures here comes directly from the returns themselves?

THE WITNESS: That is correct, your Honor.

Q Now, there is a line, sir, which is entitled "Total Adjusted Gross Income." Would you just briefly tell us what that refers to?

A That is the reported income before consideration is given of personal itemized deductions. Going back from the upper part you have Schedule C income, which is your gross receipts as indicated as a medical doctor less the business deductions that relate to his practice as a medical doctor, and the next line is a net income or loss from his profession. It is indicated that way because in one of the years a loss was reflected as a result of his private practice.

THE COURT: You mean on the return?

THE WITNESS: On the return, yes, your Honor.

Q Now, the line which is entitled "Less Itemized Deductions," sir, what does itemized deductions refer to?

A Itemized deductions are the personal deductions that are claimed on the tax returns such as charitable contributions, medical expense and interest expense.

Q What does the line entitled "Exemptions" refer to?

A Exemptions refers to the personal exemptions such as the credits that are given for a wife or a son a child or any -- or some support, any individual that one may support.

Q What does the very last line entitled "Total Taxable Income Reported" refer to?

A That refers to the net result of the taxpayers financial situation in that year and is the amount on which the Federal income tax is based.

Q That is not the tax itself, that is what you compute the tax from?

A That is correct.

MR. LAWYER: Your Honor, shall we take all these back now?

THE COURT: Yes. Mr. Clerk, would you be good enough to take these copies of Exhibit 5 from the jury.

Q I show you Government Exhibit 541 for Identification.

What is 541, sir?

A 541 is a schedule of payments made to Dr. Wolf by White Weld & Company, a brokerage firm, during the years 1968 and 1969 and it shows a disposition of all the payments made to Dr. Wolf, and it relates to Government Exhibits 3 and 4.

Q Which are income tax returns?

A The income tax returns.

Q I show you Government Exhibit 542 for Identification. What is that?

A Government Exhibit 542 relates to an analysis of payments to Dr. Wolf made by Goodbody & Company, a brokerage firm, during the year 1969 and indicates thereon disposition of such payments. It relates to Government Exhibit No.4.

Q It refers to the 1969 tax return?

A Yes.

Q I show you Government Exhibit 543 for Identification. Do you know what that is?

A Government Exhibit No.543 shows a listing of payments made to Dr. Wolf by Eastman, Dillon-Union Securities & Company during the years 1967, 1968 and 1969. It shows a disposition of such payments and it relates to Government Exhibits 2, 3 and 4.

Q Which refers to the income tax returns for 1967, 1968 and 1969?

A That is correct.

MR. LAWYER: We offer 541, 542 and 543.

MR. APPLEMAN: Your Honor, objection to 541, 542 and 543. The accounts of White Weld & Company, Goodbody & Company and Eastman, Dillon are not in evidence.

MR. LAWYER: The income tax returns themselves show various information from those brokerage houses.

THE COURT: Mr. Skolnick, I just want to make sure that I understand where this information shown on these three exhibits comes from. Does it all come from the tax returns?

THE WITNESS: The information here basically comes from the brokerage firms, but it relates to the sales of securities during the years indicated in these exhibits. In other words, the tax returns show stock transactions. During those years he had various sales of stock and he received payments from these brokerage firms for these payments, your Honor.

THE COURT: All I am trying to figure out is in the column statement, that is, where that information comes from.

THE WITNESS: From the brokerage firms, the monthly brokerage statements to the taxpayer.

THE COURT: Are they in evidence?

MR. LAWYER: The brokerage statements are not as such in evidence. We will be offering this only for the limited purpose of his computation and that basically is in the return.

THE COURT: I am afraid I will have to sustain the objection at the present time.

Is this a good place to stop, Mr. Lawyer? Perhaps we could consider that after I excuse the jury.

MR. LAWYER: All right.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, it is practically the promised time when I excuse you. We will separate until Monday morning at 9:30. Please keep in mind as we part for this weekend not to discuss the case amongst yourselves or with anybody else. We hope the weekend will be restful. We will resume here at 9:30 on Monday morning. Thank you very much. You may leave.

[The jury left the courtroom]

THE COURT: I haven't any doubt these documents can be qualified to be admitted. For instance, do we have the brokers' statements? I mean without even putting them in evidence.

MR. LAWYER: Yes.

THE COURT: As long as they are made available to Mr. Appleman I won't require the Government to put them in evidence and I don't know where the other notations on the exhibits come from.

MR. LAWYER: There is information in the tax return itself, your Honor, which could be taken as an admission.

THE COURT: Do you think that between the brokers' statements and the tax returns everything is covered?

MR. LAWYER: I have no doubt about it. I think the tax return itself would cover whatever we want to use it for, but between them, between the two, I have no doubt.

MR. APPLEMAN: The tax return never discloses what is taken out of the brokerage account. The tax return only discloses the end result of transactions. That doesn't mean that this money was taken out. The money could have remained in the brokerage account and purchased other securities. I would strenuously object to that last comment with respect to the tax return covering these moneys received by the Doctor.

B49 THE COURT: I don't know, of course, just what Mr. Lawyer wants to use it for. Maybe he can reshape the exhibits to suit his purposes and make it simpler.

As I say, if it is worth doing it can ultimately be done.

MR. LAWYER: Yes.

THE COURT: But I just don't think there is a foundation at the present time.

MR. LAWYER: Very well, your Honor.

THE COURT: All right. Then we will recess until 9:30 on Monday morning.

MR. LAWYER: Your Honor, on Monday I will be finished with Mr. Skolnick and I will have a Revenue agent testify as to the computations. His direct testimony will take about half an hour or less, probably. I will have no other witnesses unless over the weekend I happen to come upon something which I think I had better add. Of course, we have no idea how long Mr. Skolnick will be on cross-examination.

THE COURT: Mr. Appleman understands that he will be ready on Monday to go forward. I just advise the defendant to be ready. When we finish the taking of testimony on Monday, as it appears, it would be my thought that we would then adjourn until Tuesday morning and have summations and the charge on Tuesday morning.

MR. APPLEMAN: Hopefully yes, your Honor, but I am not certain as to the number of defense witnesses. Initially I was hoping to finish Monday morning and sum up

Monday afternoon, but the way things are progressing that didn't work out.

THE COURT: I don't want to press or hurry you. I want to give you as much time as you need for your case and I will do that.

MR. APPLEMAN: Thank you, your Honor.

THE COURT: All right. Mr. Skolnick, we will ask you to come back Monday morning.

THE WITNESS: Yes, your Honor.

[Trial adjourned until Monday, November 19, 1973 at 9:30 a.m.]

United States of America

-vs- 73 Cr. 486

Robert L. Wolf

New York, New York
November 19, 1973--9:30 a.m.

[Trial resumed]

B50 THE COURT: Mr. Appleman, do I understand your client is sick?

MR. APPLEMAN: Your Honor, at 11:30 last night I received a telephone call from Dr. Wolf's mother telling me that the Doctor is in Doctor's Hospital with bleeding ulcers and that her son asked her to call me. That is the only information I have. Due to the lateness of the call, I could not verify anything else.

THE COURT: Mr. Lawyer, I think I will have to excuse the jury for today.

MR. LAWYER: Yes, sir.

THE COURT: Then we will put our heads together after the jury has been excused and see what we can do. I will ask the jury to come back at 9:30 tomorrow morning, but I will ask them to wait until the Clerk gets their telephone numbers in case for any reason we are not able to go on tomorrow.

MR. LAWYER: What, if anything, will the jury be advised as to the reason for the delay?

THE COURT: Don't you think I have to tell them that the defendant is sick?

MR. LAWYER: I was hoping we would not have to tell them that, your Honor. I don't think we can tell them anything wrong, but I was hoping that we would not have to tell them that he was sick. I think generally when the Judge charges they are charged that they are not to take any reason of sympathy into consideration. I was wondering whether in this situation whether that would not in fact be injecting something.

THE COURT: I can tell them that the defendant is not able to come to court today.

MR. APPLEMAN: That would sound worse than being in the hospital.

THE COURT: Mr. Lawyer.

MR. LAWYER: Could you not say that we cannot proceed for reasons that do not concern him?

THE COURT: I charge them on sympathy. If necessary, I can even add a separate charge on this. I think it is best to level with the jury. I can tell them that the defendant is ill. I don't know any more than that. And maybe we will go on tomorrow morning. I think it is better that way.

MR. LAWYER: I was hoping, quite frankly, that your Honor would say we cannot speculate and that we would not speculate until we could independently verify his illness. My understanding is that the defendant's mother called Mr. Appleman.

THE COURT: All right, I will say that for reasons with which the jury has no concern and about which the jury should not speculate we are not able to go on today. You don't see anything wrong with that, I take it, Mr. Appleman.

MR. APPLEMAN: No, your Honor.

[Jury present]

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, for reasons with which the jury has no concern and about which the jury should not speculate, we are not able to go ahead with the trial today. I hope it will be possible for us to ahead tomorrow morning at 9:30 and I will ask the jury to be here tomorrow morning promptly at 9:30 unless we telephone you to the contrary in the meantime. I will ask you to stay in the jury room until the Clerk gets your telephone numbers. In other words, if for any reason we are not able to go ahead tomorrow morning, I will ask the Clerk to telephone you. Unless you get a telephone call from the Clerk, please be here tomorrow morning at 9:30.

All right, thank you very much. You may retire and be excused until tomorrow morning at 9:30.

[The jury left the courtroom]

THE COURT: Now, Mr. Lawyer, I hope that the resources of the United States Attorney's office are adequate to get a physician immediately who can be sent under an order by me to examine Dr. Wolf and to report hopefully this afternoon.

MR. LAWYER: I will try, your Honor. I will do my best. I think we can do it.

THE COURT: If the worst comes to the worst, maybe we can get a Public Health Service doctor, but maybe that isn't necessary. Don't you agree that that is the prudent step for me to take? In fact, it is the indispensable next step, isn't it?

MR.LAWYER: I believe that is true.

THE COURT: Don't you agree, Mr. Appleman?

MR. APPLEMAN: Yes, your Honor, I agree.

THE COURT: And because we have got to know -- Obviously we are not inhumane and if a man is genuinely too ill to come here he has to be excused. On the other hand, it is my duty to be sure of my facts and also assuming that the defendant is ill, how ill is he and when will he be able to resume trial.

So I suggest, Mr. Lawyer, that you proceed at once to try to locate a physician and if it is necessary to prepare an order maybe we could dispatch him to examine Dr.Wolf even before we type up an order and I sign it.

MR. LAWYER: Yes, sir.

THE COURT: And I will see that he is paid to the extent that I can.

MR. LAWYER: Yes, sir.

THE COURT: And let's shoot to try to have him come in this afternoon and we will hear his report in open court.

MR. LAWYER: Very well, your Honor.

THE COURT: Maybe, if it will save time, he will not have to make any written report. He can just come down here and we will take his report in open court.

MR. LAWYER: Very well, your Honor.

THE COURT: Do you think that is sensible?

MR. LAWYER: I think it is quite satisfactory to me, your Honor.

THE COURT: Have you any other suggestions, Mr. Appleman, as to what we can do?

MR. APPLEMAN: For the record, he does have a prior history of ulcers, peptic ulcers, and this has been brought out even in the special agent's report. However, I think I have no objection.

THE COURT: Nothing that I have said is intended to imply any suspicion that Dr. Wolf is malingering, but I have a public responsibility and I have got to see that the facts are made a matter of record. We, all of us, have got to know when can we resume.

MR. APPLEMAN: Yes, your Honor.

THE COURT: Now, Mr. Lawyer, do you have Mr. Appleman's phone number?

MR. LAWYER: I do.

THE COURT: Be sure to get it. If we can have a session this afternoon with a doctor, we will want to do it. My Clerk will take your phone number.

[Recess until 5:30 p.m.]

THE COURT: Doctor, would you mind taking the stand here and taking the oath.

WILLIAM M. HITZIG, called as a witness by the Government, being first duly sworn, testified as follows:

THE COURT: If I didn't thank you for helping us, I want to thank you now.

THE WITNESS: I am very happy to be of service.

THE COURT: Mr. Lawyer, let's get the Doctor's information and then we will let him go home.

DIRECT EXAMINATION

BY MR. LAWYER:

Q Dr. Hitzig, at what address do you practice?

A 787 Park Avenue.

Q Here in Manhattan?

A Yes.

Q What is your specialty, sir?

A I am an internist and cardiovascular specialist.

Q Do you know a person by the name of Robert L. Wolf?

A Yes.

Q Do you know him personally?

A I know him personally too. He was one of my interns.

Q You have known him prior to today?

A He studied under me. He was a fine young man when I knew him.

Q Did you examine him pursuant to a Court order?

A Yes.

Q Where did the examination take place?

A Doctor's Hospital.

Q Was Dr. Wolf confined to bed?

A Yes, confined to bed.

Q Would you tell the Court what your examination consisted of?

A My examination consisted of a history and a physical examination. The primary purpose of my visit, as I understood it from the United States Attorney was to determine whether he was bleeding or not and on the basis of that I examined him completely, as much as I could, including his blood pressure. I took his pulse and then I did a rectal examination, and on the basis of that I made certain deductions.

B51 Q What werethose deductions, sir?

A First of all, that he is suffering, evidently, from an old standing history of ulcer and that he was acutely ill with pains in the upper abdomen. I could hardly touch him. But I found no evidence of gross bleeding. However, his pulse rate was very fast and whether that was due to excitement of seeing me, because he didn't expect me, or whether it was due to the fact that he was bleeding, I cannot say, except that the stool examination -- the stool that I removed didn't look like gross blood. It was a black stool, very dark and the story given to me by his physician, a Dr. Kornfeld was that he had a hemoglobin of 15.2 sometime ago or a week ago and that yesterday when he came into the hospital it was 12.5 which would indicate that there has been a drop of hemoglobin of three points.

So, whether or not he is bleeding I cannot say. In my presence, that it was actively bleeding, I couldn't find it. Whether he is going to have any bleeding -- one can only wait until he has a real good bowel movement and see what the next bowel movement will show.

Q How about the X-rays?

A As to the X-rays, his doctor ordered one for tomorrow morning.

Q He will not be X-rayed until tomorrow morning?

A No, they don't X-ray them at Doctor's Hospital unless you are prepared and evidently his doctor didn't come in in time to order it for today, so it will be done tomorrow.

THE COURT: What time do you understand, Doctor, that he will be X-rayed?

THE WITNESS: I understand -- I saw the notice. There was an order for it. But the only way one can be sure is to -- You see, I spent so much time trying to get Mr. Lawyer that I couldn't call the X-ray people -- They leave at 4:30 -- to find out whether he is on the schedule. But I think that I cannot interfere. His own doctor will have to decide whether he gets on a schedule, but I have a feeling that he is going to be done tomorrow.

Q Did you yourself form any opinion as to his present ability to continue on trial?

A Well, I would say this: This young man was jumping out of his hide. I mean, he was nervous, despondent, excitable, almost pugnacious. Anything that happened -- Just by accident I tipped over a glass and he just went into a tantrum. If he has an active ulcer or a stressful ulcer, because, as I understand it, he has been here for a week -- I didn't even discuss his problem with him except that he sort of implied that he was in trouble here or having some difficulty and so forth and so on and he wanted to get finished with it as quickly as possible. Whether or not he is going to be all right, whether he is going to be able to go on, I cannot say until tomorrow morning to see what it looks like. If he is bleeding actively he cannot come. He's got a very sensitive area which may be a penetrating ulcer, but whether or not it is I cannot say. All I can say is that he has a very tender area on his abdomen, tender to pressure. Whether that bespeaks underlying disease -- If they do the X-ray at 10:00 o'clock he ought to be finished within one to two hours. They ought to know whether he has an active ulcer or he has a penetration or not. Certainly by that time I hope he will have a good, frank bowel movement.

Q Are we to contact the hospital?

A I am not going to butt into that. I've got only one order today.

Q So that we would contact Dr. Kornfeld?

A He is also a former intern of mine, a very fine gentleman.

THE COURT: Where is his office?

THE WITNESS: It is on Fifth Avenue. I am sure he will give you every cooperation. He is a very charming and able young man. I mean, he is younger than I am.

THE COURT: What is the significance of bleeding, Doctor, that is, if an ulcer is bleeding?

THE WITNESS: There is a saying that once an ulcer always an ulcer, like once an Englishman always an Englishman. When you have an ulcer -- Ulcers are a psychosomatic disease and it depends on the stresses, the strains of life, and if you are exposed to pressure and tension and things which might threaten your survival the ulcer can get worse to a point where you eat yourself up, so to speak, figuratively and literally, and you extend the ulcer and you could bleed, you could penetrate, which means extending to the depths of the tissue into the pancreas and cause problems. I don't see how you could take a chance with a man who has symptoms of this nature, especially since an ulcer was previously documented and according to X-rays previously taken about a year ago.

THE COURT: But if the ulcer is actually bleeding, do I understand you to say that a person ought not to be here in the courtroom on trial?

THE WITNESS: When he is bleeding?

THE COURT: Yes.

THE WITNESS: No, it would be dangerous. You wouldn't want the responsibility. All I can say at the present time -- I couldn't say that he is frankly bleeding. I can't find evidence. And I think his rapid pulse is due to other causes, extraneous causes like nervousness and anxiety.

THE COURT: He is a defendant in a criminal case. He has been indicted by a grand jury. Anybody would naturally have some reaction to that situation.

THE WITNESS: Yes, of course. Even a normal person without an ulcer would have a reaction.

THE COURT: Certainly. But suppose that tomorrow he has an ulcer that is bleeding. How long would it take him to get over that?

THE WITNESS: If he has a bleeding ulcer it would take at least three weeks for an ulcer to heal.

THE COURT: Three weeks?

THE WITNESS: If he is bleeding, frankly, at the present time, I can't say that. I can't say until his next bowel movement whether he will be bleeding or not.

An X-ray might tell you only if he is penetrating. Then there would be the blood examination and the drop in blood count. The blood count today was 12.5. His next blood count should be coming in and will tell you whether it is stabile. If it goes higher that means he is not bleeding, unless he is dehydrated, unless he hasn't taken any fluid. If he has had a drop in blood hemoglobin you would have to say he is bleeding. According to his doctor he had a hemoglobin of 15.2 last week and now it is 12.5. Dr. Kornfeld said he had one plus blood when he saw him a week ago, so I think we will have to wait until we see the next bowel movement.

THE COURT: If he isn't bleeding I take it he could come in on Wednesday?

THE WITNESS: If he isn't bleeding and if he has not got a penetration, if his X-ray is negative, so to speak, just a scarring, let's say, indicating an old ulcer, then I have a feeling that he could come in on Wednesday if his blood count is contained and he has no blood in his stool. These are two criteria you have to employ, the maintenance of his blood count and the presence or absence of blood in the stool.

THE COURT: Go ahead, Mr. Lawyer.

MR. LAWYER: I have no other questions.

B52

THE COURT: Mr. Appleman, do you want to ask Dr. Hitzig any questions?

MR. APPLEMAN: I would like to clarify one item. My father, may he rest in peace, had an ulcer. At the time that he started bleeding he wasn't under the stress and strain that one would have in a courtroom. He let it go for three or four days and then he had to be carried by stretcher to a hospital and they had to pump blood into him in order to get him to a sufficient blood count so that they could operate and actually cut out his stomach. This is how dangerous it is. At the time that he had it we were fortunate that he lived. He died from other things.

This is a very dangerous illness; is that correct, Doctor?

THE WITNESS: Yes.

MR. APPLEMAN: I just am talking from the experience of my father.

THE COURT: Do you agree that it is a dangerous illness?

THE WITNESS: I have only seen one patient who bled to death, but we are smart enough now not to let that happen. We even take X-rays while the patient is bleeding. We didn't do it in the old days. We used to wait. Now we take X-rays and see if there is really an ulcer. We can see it. Sometimes we are forced to go in and operate if the man is losing blood. This man insisted to me that he had black stools yesterday and I didn't see them. I couldn't tell that. I wasn't there so I can't deny that what he is telling me is an element of truth. So, with that story and with knowing the stresses that he is going thru in a courtroom, I think we are forced to give him the benefit of the doubt.

THE COURT: So far did you examine a stool?

THE WITNESS: I examined grossly -- I examined a stool. To me it didn't look like acute blood. It was a dark stool. It wasn't black. It was deep brown, almost black. I sometimes see this kind of stool with people who take iron and there is iron sulphide which gives it a blackish color.

THE COURT: You couldn't say that it was blood?

THE WITNESS: I couldn't say grossly. Using the categories of one plus, two plus, three plus and four plus, which is the extreme, I couldn't say that it was four plus. I would say that if there was any blood it would be at the lowest range. However, this will depend, in view of his symptoms and the symptomatology, in view of the fact that his pulse was rapid and in view of the fact that the hemoglobin had already dropped from last week's examination according to Dr. Kornfeld to last night's, which was 12.5, that we have and it has to go thru all of it and reach the bottom grossly. I can say that I couldn't find frank blood.

THE COURT: Apparently most of his difficulty cannot be verified. It is only what he says.

THE WITNESS: That is true.

THE COURT: You can't look at it or take any objective tests?

THE WITNESS: No, you can't take an objective test. We have got to do it by indirection. There was a rectal examination. Dr. Kornfeld told me that on rectal he couldn't find any stool. I found some stool but it didn't look like frank blood to me. It looked like blood gets changed by the time it goes down thirty feet and it changes from bright red blood and becomes black. It becomes what could be called tarry, or it looks tarry.

THE COURT: Do you want to ask the Doctor any questions, Mr. Appleman?

MR. APPLEMAN: No, your Honor.

THE COURT: Dr. Hitzig, it is my responsibility to complete this trial. We are right in the middle of it.

THE WITNESS: Yes.

THE COURT: This presents me with a very difficult administrative problem. What do you advise me to do?

THE WITNESS: I would advise you to do the following: I would advise you to see what the X-rays show and get Dr. Kornfeld to guide you. Give him a directive like mine and make him come down. By tomorrow he ought to be able to tell you much more, when all the facts are in and, besides, he has seen him at his office and he has seen him at the hospital today, so he ought to be in a much better position after he sees the X-rays. I can't butt into his X-rays because he is a private patient.

THE COURT: Let's see what happens with Dr. Kornfeld tomorrow.

THE WITNESS: He is a very decent person and fine gentleman.

THE COURT: We may have to ask you to help us again.

THE WITNESS: Look, I'm an old man. Please. I do it for Judge Weinfeld upstairs.

THE COURT: He is a friend of mine.

THE WITNESS: This beautiful man told me all I had to do was make a phone call, so I accepted. I misunderstood him, probably.

THE COURT: Mr. Lawyer, will you arrange for the Doctor's fee including his trip down here. Be generous.

MR. LAWYER: I had originally said $75.

THE WITNESS: You can give that to a charity.

MR. LAWYER: I would ask the Doctor to state his fee.

THE WITNESS: If this were for an ordinary citizen, not for you, I would charge $500. for making me come down here tonight, honestly.

THE COURT: What do you think I ought to pay you? Let your conscience be your guide. I will let you decide your fee.

THE WITNESS: Don't embarrass yourself. Do whatever you think is right. But I honestly wouldn't have taken this for a million dollars. This exhausts me. I have still got to go to another hospital. I am Professor Emeritus. I take special cases. I have got so many sick ones. I haven't got the time or the strength. Do whatever is consistent with your point of view.

THE COURT: What about $200.?

THE WITNESS: I get more than that from Judge Weinfeld just for a report.

THE COURT: $250.

THE WITNESS: All right, if that will help the Court I will be very happy to accept it.

THE COURT: All right, pay the Doctor $250. But I still say that we may be in an emergency, Doctor. We may have to call on you again.

THE WITNESS: I have great respect for you, your Honor. If I can arrange it I will do so.

THE COURT: All right. Thank you.

[Witness excused]

THE COURT: Mr. Appleman, I think I am either going to have Dr. Kornfeld here or a full report from Dr. Kornfeld on the defendant sometime tomorrow afternoon.

MR. APPLEMAN: Fine, your Honor.

THE COURT: Will you be in touch with Dr. Kornfeld?

MR. APPLEMAN: Do you want me to be, your Honor?

THE COURT: Yes, definitely.

MR. APPLEMAN: I felt that it was my function at this point not to interfere with the examination or anything else, so I didn't do anything or call anyone with regard to this. Now, if you desire it I will definitely call Dr. Kornfeld. I will speak to Dr. Wolf tonight. I will tell him to have Dr. Kornfeld call me rather than my keep calling Dr. Kornfeld, and that we have to have a report by tomorrow afternoon.

B53 THE COURT: Mr. Lawyer, isn't this possible, that if the situation is unchanged -- I mean, if I don't have any information tomorrow I think I would be inclined to send a marshal up to Doctor's Hospital and bring Dr. Wolf down here Wednesday morning. Is it possible to have a Public Health Service doctor go with the marshal? I have done it. I called up the Public Health Service people in Washington and got them to authorize it and I sent a Public Health Service doctor with the marshal and an ambulance to a hospital in Rockland County and transferred the defendant. This was a question of a surrender and they transferred him under those circumstances from the hospital in Rockland County to Danbury.

MR. LAWYER: I have never had any experience with it, your Honor, but I will determine whether we have done it in the past. If your Honor has done it, I don't see any reason why we can't do it again.

THE COURT: Do you remember Mr. Givens? The defendant's name was Sterngass. I think I did the telephone calling, which I'd rather not have to do again. But it was arranged. Of course, we are not at that stage now, but it was arranged the Bureau of Prisons and the Public Health Service. But there has to be some Governmental resource that is capable of being applied to this situation. Obviously I don't want to be inhumane, but I cannot have this trial aborted by the defendant's illness.

MR. LAWYER: Yes. I will inquire tonight or tomorrow and I think we will know the answer tomorrow and if the Public Health Service doctors are not readily available we will arrange to do it.

THE COURT: Mr. Appleman, the burden at this point I think is on Dr. Wolf. If Dr. Wolf does not satisfy me in some way by the middle of the afternoon tomorrow that he is too ill to appear in court I am going to issue a bench warrant and have him brought in here to begin the trial at 9:30 on Wednesday morning.

Now, I'm giving him an opportunity and you an opportunity to show me why that shouldn't be done, but I have just got to continue turning the wheels, if possible.

MR. APPLEMAN: I understand the position your Honor is in and the fact that the wheels of justice do have to turn, but based on my experience with my father I would suggest that if Dr. Wolf is bleeding that we tread softly because this is a very dangerous position for any person to be in. My father, as I said, wasn't under the stress and strain of a trial and because of the fact that he didn't take care of the initial bleeding he was forced to have his stomach cut out and almost died on the operating table at that time. When we went into the operating room the doctors told me that he only had a 40% chance of living. This is the only experience that I have had with an ulcer, your Honor.

THE COURT: At the moment I have no evidence that he is bleeding. In fact, the evidence is to the contrary. Dr. Hitzig says he found no evidence of bleeding.

MR. APPLEMAN: Except the fact that based on the report the hemoglobin went from 15 to 12 and something else with the blood count are indicative that there is a possibility that there is bleeding. He is not certain. What Dr. Kornfeld has to do is to evaluate the tests that the defendant is now undergoing.

THE COURT: I am giving you and the defendant an opportunity to convince me that I should not do it, but my present intention is to issue a bench warrant and have him brought down.

MR. APPLEMAN: I will tell him that and I will ask Dr. Kornfeld to call me tomorrow afternoon at 2:00 or 3:00 o'clock. That will give him sufficient time to look at the X-rays.

THE COURT: I think Dr. Kornfeld should call you a whole lot sooner than that because we will have to have a hearing tomorrow and I should think Dr. Kornfeld would have to appear himself.

MR. APPLEMAN: I will tell him that, your Honor.

THE COURT: If I am not persuaded I will have to send a marshal to get him. We can't wait until 2:00 or

3:00 o'clock. We will have to meet here in the afternoon.

MR. APPLEMAN: I will ask Dr. Kornfeld to call me as soon as the results of the tests are known to him and to please try and arrange to make an appearance as soon as it is practical, and to please notify me an hour in advance so that there will be due notice to Mr. Lawyer and everyone that is necessary to be here, your Honor.

THE COURT: And of course it goes without saying that once a bench warrant is issued Dr. Wolf will remain in custody until the end of the trial. We have got medical facilities in West Street. That is where he will have to be lodged. I just don't think I have any alternative. You can see what it has done to my schedule. I have a case which was supposed to start this morning. It has been put off as we moved along. Now I have to put it off until next Monday and it is just the domino theory, all the other succeeding cases have to be moved up. It will just go on until I leave on the seventeenth.

Thank you, gentlemen, for helping me. We have got a joint problem. Thank you, Mr. Reporter.

[Trial adjourned to November 20, 1973 at 3:00 p.m.]

Unites States of America

-vs- 73 Cr. 486

Robert L. Wolf

New York, New York
November 20, 1973--3:00 p.m.

B54

MR. APPLEMAN: Your Honor, Dr. Kornfeld.

THE COURT: Good afternoon, Dr. Kornfeld.

PETER KORNFELD, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. APPLEMAN:

THE COURT: Perhaps you could get the Doctor to make his report. Maybe it doesn't even need questions and answers.

Q Dr. Kornfeld, can you please state your educational background?

THE COURT: I assume the Doctor is an expert fully qualified.

Q Do you know Dr. Robert L. Wolf?

A I do.

Q Is he your patient?

A He is.

Q Did you examine him today?

A I did.

Q Will you please tell the Court what the results of that examination was?

THE COURT: Doctor, the whole problem here is that we are in the middle of a trial. Dr. Wolf is a defendant in a criminal indictment and we began the trial last week. We completed Tuesday, Wednesday, Thursday and Friday morning, three and a half days. Dr. Wolf, when we quit at 1:00 o'clock on Friday, seemed perfectly normal, and then on yesterday morning he didn't appear because he was, I was told, in Doctors Hospital, and now what I am interested in is whether there is any danger to his life if we go on with the trial at 9:30 tomorrow morning.

THE WITNESS: May I reply?

Q Go ahead.

A You put me on the spot. May I make a few introductory remarks, your Honor?

THE COURT: Yes.

A I saw Dr. Wolf as a patient for the first time on November 9 of this year and I am reading from my records now. I had known Dr. Wolf before because we are on the staff of the same hospital. We had interned together twenty years ago.

THE COURT: They tell me it is one of the best hospitals in the world.

THE WITNESS: We think it is a good one. I will leave it at that.

He presented me with the following story: He is 45 years old with epigastric distress, heartburn for the past two years. GI series two years ago. Is said to have shown thickened duodenal fold, but no ulcer, according to the patient.

He stated that he had been under great emotional stress for the past year. Two weeks ago there had been a flare-up of epigastric distress with radiation into the back associated with heartburn and occasional vomiting. He had treated himself with antacids. He has had dark brown but not black stools and there has been no hematemisis, no vomiting of blood. He has lost about 50 pounds in the past three years. His appetite has been poor and the impression from the way he talked is that he had been depressed. He denied increased sweating, diarrhea, tachycardia, fast heart rate. We were trying to see if there was any hyperthyroid state. The past history really had not been contributory. He had some traumatic injury. He had pneumonia three times, viral pneumonia. He had stopped smoking and the only other pertinent thing in the past history he told me that he had rainos type symptoms for the past three to five years particularly involving the third right finger. All this means is that he had excessive sympathetic discharge which was particularly sensitive to cold weather where the extremities would turn white, red, blue, etc.

The rest of the history was benign. The family history was not contributory.

He told me that he had been divorced; that he was on no drugs except antacids and antispasmotics; that his average weight was 143; that he had weighed 195 five years ago.

On physical examination he did weigh 143 pounds. He was gaunt, anxious, in moderate distress. However, his blood pressure and pulse were not quite normal. Heart and lungs were normal. His abdomen was soft but there was what we call on a zero to four scale three plus epigastric tenderness present. However, the abdomen was soft. There was no rebound, no masses. His testes were both descended. There was no hernia. Rectal examination revealed a small amount of dark brown stool which was tested in the office for blood and was found to contain a trace to one plus, which is not particularly specific. Hemoglobin 15.2. My impression at that time was that he had a duodenal ulcer. The question was whether it was penetrating posteriorly and possibly rainos disease and whether the depressed thyroid should be evaluated because of the marked weight loss. I told him to go to bed for awhile, be on a strict diet, take antacids and probothene. If stools did become black that he was to notify me and that he should be in the hospital.

I did hear from him this past weekend. I was in Philadelphia for the weekend. He had called. I received a message that he had called that he was quite sick. I called him Sunday evening as soon as I returned and he told me that he had a black stool, that he had some abdominal distress and that didn't feel well. I pressed him as to whether the stool was really black, meaning upper GI bleeding, and he said yes. I said "I want you in the hospital."

He was admitted to Doctors Hospital. His blood count on the night of admission -- I am speaking from memory now -- was around twelve and a half or thirteen, but his blood pressure was good, his pulse was good and I didn't see him. I spoke to him on the phone. I didn't see him that night. I spoke to the resident. He felt that he was in no particular stress and there certainly wasn't shock. The blood count was in a particular range of 12.5. The blood count for a normal adult male is somewhere around 14 to 15, so it was a little bit low but not very exciting. The hemocratic, which is a measurement of the volume of the blood cells, which is another probably little more accurate measurement of the amount of hemoglobin was around 37. When he had been in the office before his hemoglobin had been 15 as compared to 12.7. These tests are not too accurate. They have to be repeated. We thought we would sit for awhile since his vital signs were stabile.

The next morning he had no stool in the hospital. No black stool could be produced and we left orders that all stools were to be examined for blood.

B55 I saw him Monday morning early in the morning. His vital signs were stabile. His physical examination was essentially unchanged from what it had been in the office. He still had this little tenderness on the epigastrium, he still had no stool. His blood came back that day and it was in the 13 something range, so it had certainly not fallen. In the afternoon we had another blood count stabile again and blood pressure remained stabile and in the meantime he was being treated with milk every hour and Maalox an antacid and the antispasmotic. The antacid was in the form of Maalox.

Q What pain was he suffering on yesterday?

A He had pain when I pressed the epigastrium.

Q If you didn't press there then there wasn't pain?

A He said he had been uncomfortable, he had had cramps, but no distinct pain pattern that I elicited. We ordered a GI series and blood counts as well as routine chest cardiograms, SMA 12, which is a chemical profile. That had all come back yesterday within normal limits.

After I had seen him again I had a call from the nurse in the evening that he had cramps and the house officer saw the Doctor and he apparently passed a stool which was described by the doctor and by the laboratory as dark, bulky, softish with what looked like red, dark red blood in it, intermingled, mixed with it, which was four plus.

Q What time wastthis?

A This was in the evening, the early evening hours.

Q Yesterday?

A Yesterday. I understood he had another stool and then subsequently this morning had two more soft stools and on calling the lab this morning -- The results weren't on the chart yet -- I had four blood readings of four plus, three plus, four plus and four plus. I distinctly asked the lab if stools were black and the girls looked at it and said no, they were not black.

I examined Dr. Wolf at the same time last night after I was told that he had passed this blood-containing stool. We had gotten another blood count which remained stabile. We got another one this morning which remained stabile.

The first one early in the morning, another one after he had passed the two stools, showed no essential change of anything -- a little bit high within the realm of the error of the machine that measures the hemoglobin. He had a GI series done this morning which I reviewed with the X-ray people and it was rated as perfectly normal.

I went back to the room and examined Dr. Wolf. He had this little tenderness. His pulse was normal. Regular blood pressure was stabile and he just was very drowsy and sleepy. He asked what the tests showed. I told him I don't know where this blood is coming from. It was bright red blood or dark red blood. We have to make sure it is not coming elsewhere lower down in the GI tract. I thereupon ordered a barium enema, which means that he gets the barium by rectum to visualize the colon. Unfortunately, after a GI series you should wait a minimum of forty-eight hours to expel all the barium so that when you do the barium enema it would not interfere and mask any possible findings during the barium enema which would bring us into Thursday, which is a holiday. I left notes if X-rays were going to be taken at the hospital on Thursday, please do the barium enema. If not, on Friday. Also, all stools are to be examined and I would also want to have a proctologist take a look at his rectum and lower, even of the colon, to see whether there was any sight of bleeding there. This is where we stand now, sir.

THE COURT: Doctor, I don't find the slightest evidence that he couldn't be here at 9:30 tomorrow morning until 4:30 tomorrow afternoon. We are going to take off Thursday anyway.

THE WITNESS: If I may venture an opinion, sir, I feel a little bit uneasy having anybody who is a bleeder running around. Personally in my own patients if somebody has GI bleeding I prefer to prove GI bleeding and in the hospital. You never know when he is going to start or stop. I have no idea where this bleeding is coming from or why he is bleeding.

THE COURT: He isn't bleeding very much. If anything happens in court we can a doctor here and we can excuse him.

THE WITNESS: Well, that is up to you, sir. Certainly his blood count has remained stabile. His blood pressure and pulse has remained stabile.

THE COURT: I am not inhuman, Doctor, but the pressures from which Dr. Wolf is suffering are the same pressures all of us have except they are accentuated in his case by the fact that he is a defendant in a criminal case, a most uncomfortable position in which to be, and a position with which I thoroughly sympathize.

THE WITNESS: Might I add, sir, that until I had the call today from this gentleman, Mr. Appleman, I had no idea what was going on. The only thing that he had alluded to me in the past was that he was having some custody troubles in the past about his child, and that is all I know.

THE COURT: This is a criminal indictment trial before a jury here for income tax evasion and of course that is a very uncomfortable position in which to be. But I have high blood pressure. If I were in that position it would send my blood pressure up, but, as you know, we have to go on.

Now, I am prepared to take Dr. Wolf and put him in West Street but I don't want to do that if he is willing volumtarily to come here tomorrow.

Could an intern come with him? Can you get a doctor who can sit here?

MR. LAWYER: I seriously doubt that we can provide one on this type of notice. There is great difficulty in getting any doctor, especially coming to a court. I could inquire.

THE COURT: What about a Public Health Service doctor?

MR. LAWYER: I can inquire.

MR. APPLEMAN: Due to the fact that we would know by Friday the definite results --

THE COURT: Oh no.

MR. APPLEMAN: -- of the tests, wouldn't it be more appropriate to wait rather than place a man in jeopardy?

THE COURT: In view of Dr. Kornfeld's very lucid explanation and very careful explanation, all of which I appreciate, we are going to go on with the trial as 9:30. The only question before us is a practical one.

B56 We have our detention facilities in West Street, Dr. Kornfeld. West Street has a hospital section with four beds and six technical-medical assistants. I don't think they are M.D.'s. I think they are what we now call paraprofessional, or whatever that term is. They have a doctor who spends two to four hours a day there. I believe the marshal could make an arrangement to have him kept tonight at Bellevue, but I am reluctant to do that if it isn't necessary. I should think in Dr. Wolf's own interest he would rather come down here at 9:30 tomorrow morning and, as I say, I am not an inhumane man. If he becomes seriously ill of course I will excuse him and we will send him in a taxi or an ambulance to the hospital. As a matter of fact, the marshals can bring him here in an ambulance. But under the circumstances I simply have got to go ahead with this trial.

Doctor, I've got thirteeen jurors from all over this area in the Southern District of New York. I've got the United States Attorney, defense counsel, the Clerks, the Court, the whole machinery is on dead center. If it were a question of life and death, of course, I would stop, but it isn't. Obviously you are a prudent man and I admire you for it, but you can't predict but for all that we know he might be able to get thru until 4:30 tomorrow afternoon perfectly all right. We are not sitting on Thursday. We will resume on Friday.

Do you suppose, Mr. Appleman, that Dr. Wolf will come voluntarily?

MR. APPLEMAN: I would have to question Dr. Wolf about that. I cannot speak for Dr. Wolf.

THE COURT: If there is any doubt about it I will have to take him into custody.

All right, we will issue a bench warrant.

MR. APPLEMAN: Can I make a phone call to Dr. Wolf to determine whether he will or will not before the bench warrant is issued?

THE COURT: All right.

MR. APPLEMAN: However, based on the fact that the Doctor feels that someone who is bleeding should remain in a hospital and based on the fact that we all --

THE COURT: Of course ideally, obviously, since I have high blood pressure, ideally I ought to be in a hospital.

MR. APPLEMAN: We have some evidence that the man is bleeding.

THE COURT: Not extensively.

MR. APPLEMAN: Let's hope it never gets to be extensive, no matter what happens at the hospital. I wouldn't want Dr. Wolf's health impaired whatsoever.

THE COURT: Would a nurse help if a nurse came with him?

THE WITNESS: I don't think so, your Honor. As I tried to visualize this, as you know, anybody who has -- And I can't say he has an ulcer because the X-ray hasn't shown it -- The only thing is that once in a while a small, tiny ulcer may exist which is not visualized on the GI series. The only thing I can say is that any aggravation, and this horror that you have pictured here that he is facing, if there is an ulcer certainly isn't going to help it. Whether he may on the spur of the moment vomit up some blood, have a gastric hemorrhage, I cannot predict. Nobody can. From an ideal point of view the ordinary patient of mine, if he or she were bleeding, I would have them in the hospital, but there are other factors here which I cannot --

THE COURT: You are very sage. I understand you perfectly. You say the X-rays do not show an ulcer.

THE WITNESS: The X-ray, the GI series done this morning at Doctors Hospital was read as normal.

THE COURT: Normal. All right.

THE WITNESS: Of course, we don't know what the lower GI tract looks like.

THE COURT: What we have to do immediately is to get thru tomorrow from 9:30 in the morning until 4:30 in the afternoon. Of course, Dr. Wolf is himself a physician and I guess, like a lawyer, you don't like to be your own physician, and I am willing to do anything and I am sure Mr. Lawyer is. We will get an ambulance and have a nurse. You say a nurse wouldn't be of any value. What is the worst that could happen, that he would start bleeding, vomiting?

THE WITNESS: That he would have a massive hemorrhage and become shocking. That is pretty bad. Somebody has a massive hemorrhage and intravenous has to be started immediately. The patient has to be cross matched and typed, which I had ordered prophylcatically. He or she should be transfused as quickly as possible.

THE COURT: Mr. Lawyer, I think the marshal can have an ambulance here and Beekman Hospital is almost within a stone's throw. Of course, we don't know that this will happen.

THE WITNESS: There is no way of predicting it.

THE COURT: If it doesn't happen, well and good. If it does happen we will have an ambulance standing by and take him to Beekman Hospital. Isn't that about the best we can do?

MR. APPLEMAN: Your Honor, the best thing I think that could be done here is that we halt the wheels of justice for two more days.

THE COURT: I am not going to do that, Mr. Appleman. There is no use in talking about it any more.

MR. APPLEMAN: Okay.

THE COURT: Do we need Dr. Kornfeld any longer? I haven't allowed you to ask any questions, Mr. Lawyer.

MR.LAWYER: I did have questions but I think my questions have all been cleared up.

THE COURT: Do you want to ask the Doctor any questions, Mr. Appleman?

MR. APPLEMAN: No, your Honor.

THE WITNESS: May I ask you a question?

THE COURT: Yes, of course.

THE WITNESS: What do I do as far as the patient is concerned in the hospital now? Is he to be discharged or what am I instructions from you? Apparently I am not a free agent here.

THE COURT: I don't know that we need to do anything. If I send the marshals, of course, the marshals will go into the hospital and just pick him up. They will arrest him.

MR. APPLEMAN: I would call the Doctor and tell him that he has been ordered to appear tomorrow morning at 9:30.

THE COURT: I don't want to send marshals into the hospital and pick him up, obviously, but if I have to I am going to. If I have to, then the marshals armed with the warrant will simply go into the hospital and take him into custody the way you arrest anybody else. He will be able to rest on Thursday because we are not going to hold court on Thursday.

THE WITNESS: On Friday there is a court session.

THE COURT: Oh, yes, and probably we can finish on Friday.

MR. APPLEMAN: The case will be finished on Friday.

THE COURT: Although I have not the slightest qualifications as a physician, I am convinced, Dr. Kornfeld, that it is better for Dr. Wolf himself to get this over with one way or the other because any person with this thing hanging over him is bound to be tense, is bound to be worried and it doesn't get any better the longer you put B57 it off. It is like we are now in the realm of philosophy, but I am sure you appreciate the common sense of that. If we stop the trial now, with all the expenditure of time and effort and money, and start over again in another month or two months he will get worse during this period because he has still got to face it. This is one of those things that have to be endured and I am convinced that it is better for Dr. Wolf to get it over with. Obviously it is unpleasant.

Now, if his condition is as you have described it he could get up and put his clothes on and come down here.

THE WITNESS: At this point he certainly is physically able to do so.

THE COURT: Yes.

THE WITNESS: Right. The only thing I am concerned about is --

THE COURT: The risk.

THE WITNESS: -- is the risk.

THE COURT: All right, we have to take that chance. It is a risk that we all take.

MR. LAWYER: I have just one question.

CROSS-EXAMINATION

BY MR. LAWYER:

Q Doctor, I understood you to say that at present the only thing you really are concerned about is what might happen. There is no present reason why he cannot physically come down here tomorrow as far as you know.

A On the basis of the hard evidence that I have there is evidence of blood in the GI tract.

Q But there is no bleeding ulcer that you have been able to find?

A As I said, there is blood coming from somewhere in the GI tract and I can't pinpoint where it is coming from. That always makes me feel a little uneasy.

Q You did say you didn't find an ulcer at all?

A The X-ray this morning showed no ulcer.

Q So, therefore, it could not have shown a bleeding ulcer?

A When you have a small ulcer or there is an ulcer present which has a blood clot in it, this may not be visualized in an X-ray if it is a small one. I cannot say a hundred percent for sure --

Q It is improbable; is that what you are saying?

A Probably, but where this blood is coming from, I don't know. I would assume that since it is dark red, as it has been described by the nurse and the house officer, it probably originated somewhere low in the GI tract. Usually when blood combines with hydrochloride acid in the stomach it turns black. That is what gives it the tarry and black appearance. If it is lower down it is usually red. It is possible that if you go down the right side of the colon you can still get black stools. Usually the distal to that descending part of the colon the stool will contain red or dark red blood. Apparently this is what he is having. The only time that you can have red blood from an upper bleeding ulcer is if the hemorrhage is very brisk, overwhelming, but in that case we should have had more evidence. We have no evidence for that.

THE COURT: I respect your caution. Obviously as in every other thing in life there is some risk involved. I do have to take the risk. It does seem to me that it would be better for Dr. Wolf and more comfortable if he stays at Doctors Hospital tonight. I don't want him disturbed. On the other hand, he has got to get up and be here at 9:30 tomorrow morning. I guess the best thing is to see if Dr. Wolf will undertake to do that and if he doesn't I will have the marshals go up around 8:30 and bring him down. But, Dr. Kornfeld, that isn't smart from his standpoint, don't you agree?

THE WITNESS: It sounds terrible to me in any circumstance.

THE COURT: I quite agree.

THE WITNESS: I shudder at the thought.

THE COURT: I am reluctant to do it, but obviously I have to have some power or I shouldn't be sitting here.

THE WITNESS: The question I was going to ask is that since we have certain tests scheduled for Friday I assume that I shall have to cancel those.

THE COURT: Yes, I think so. Can they be done on Thursday? Thursday is a holiday.

THE WITNESS: I don't think so.

THE COURT: Can they be done Saturday? Maybe we will finish Friday and, if so, they can be done Monday.

THE WITNESS: If he comes down here on trial will he be abel to board up there? What is the arrangement? Is he going to be able to be out of the hospital?

THE COURT: I am perfectly willing to have him stay in the hospital if he is in this room from 9:30 to 4:30. Maybe staying in the hospital would be best.

MR. APPLEMAN: Is there a necessity for him to stay in the hospital after 4:30?

THE WITNESS: As I said before, anybody who has blood in his stool, I think I feel uneasy having him walk around. If the hospital will okay this kind of arrangement, I don't know. Then he can go back at 4:30 tomorrow afternoon to the hospital. He has to be here from 9:30 to 4:30.

THE WITNESS: I will do whatever you direct me to do, sir.

THE COURT: All right.

THE WITNESS: I had no plans to go back to the hospital to discuss this with him. I have very pressing business up at Mt.Sinai. But I would like to hear what comes out of this so I can either cancel or notify the office up there.

THE COURT: He will not have to be here on Thursday and he will not have to be here on Saturday, but he has to be here between 9:30 and 4:30 tomorrow and on Friday he has to be here from 9:30 until we finish. Now, we might finish early. We will not stay on Friday later than 6:00 o'clock and I should think the best thing would be for him to stay at the hospital, come down here and go back to the hospital, and that is perfectly all right with me. But I have simply got to have him here physically from 9:30 until 4:30 tomorrow and from 9:30 until we close on Friday and we will close no later than 6:00 o'clock on

Friday. On Thursday he does not have to be here at all. How can we work that out?

MR. APPLEMAN: I will have to wait for his decision.

I respectfully take exception to the fact that we are placing a man possibly -- And I don't know, I'm not a doctor, I'm relating what the Doctor stated -- in jeopardy due to the fact that he is bleeding. If he was not bleeding I wouldn't see any reason to have any doubts whatsoever, but the man has definitely been determined to have internal bleeding.

THE COURT: Let's don't argue about it any more. It is all up to Dr. Wolf. If he wants me to take him and put him in jail, that is what I am prepared to do forthwith, but I don't want to do it unless I have to.

MR. APPLEMAN: I will call the hospital immediately.

THE COURT: All right.

MR. APPLEMAN: I wil speak to the Doctor and then I will speak to your Clerk and tell him what his decision is.

THE COURT: All right, Dr. Kornfeld, thank you for coming down. I think we understand each other.

Is there anything that I can make any clearer to you?

THE WITNESS: No, sir. I just feel very sad about the whole business.

THE COURT: Of course you don't think it is very pleasant for me, but I have a duty to perform.

Anything else?

MR. LAWYER: No.

B58 THE COURT: Thank you, Dr. Kornfeld.

[Witness excused.]

THE COURT: All right, Mr. Clerk, we will be in recess until 9:30 tomorrow morning.

Mr. Appleman, I would like to have a report.

MR. APPLEMAN: In fifteen minutes I will have a report, your Honor. I will call him right now.

THE COURT: Because I have the marshals standing by and I will send them up there right now if need be.

MR. APPLEMAN: I will call the Doctor.

THE COURT: All right.

[Trial recessed until 9:30 a.m., November 21,1973]

United States of America

-vs- 73 Cr. 486

Robert L. Wolf

New York, New York
November 21, 1973--9:30 a.m.

B59 THE COURT: All right.

MR. APPLEMAN: Your Honor, I have just come down from the seventeenth floor and the Clerk just told me that the motion has been placed before the presiding Justice and that we should have a decision in fifteen to twenty minutes. He asked me to come down and notify the Assistant, Mr. Lawyer, and yourself with regard to that fact and that he thought that I should perhaps request that we delay any continuation of the trial today until a decision is reached with regard to that motion.

THE COURT: No, unless I am instructed by the Court of Appeals to stop the trial the trial will go on.

All right, get the jury, Mr. Clerk.

[Jury present]

THE COURT: I am sorry, members of the jury, that the trial has been interrupted, but I believe we can resume now. Thank you very much for being here so promptly.

All right, Mr. Lawyer, we have Mr. Skolnick to

MR. LAWYER: Yes, sir.

**MORRIS SKOLNICK,** called as a witness by the Government, having previously been sworn, testified further as follows:

DIRECT EXAMINATION [CONTINUED]

BY MR. LAWYER:

THE CLERK: You are still under oath, Mr. Skolnick.

THE COURT: All right, Mr. Lawyer.

Q Mr. Skolnick, I have placed before you three folders which contain documents marked Government Exhibit 81, 82 and 83 for Identification. Would you look at the folder marked Government Exhibit 81 for Identification?

A Government Exhibit 81 contains photocopies --

Q Let me ask the question first. What is Government Exhibit 81 for Identification?

A It contains photocopies of brokerage statements from White Weld & Company representing the account of Dr. Robert Wolf.

Q Pertaining to what years? Is it 1968 and 1969?

A 1968 and 1969.

Q Please look at the folder marked Government Exhibit 82 for Identification. Do you know what the documents constituting Exhibit 82 are, sir?

A Yes.

Q What are they?

A They are photocopies of brokerage statements of the account of Dr. Robert Wolf with Goodbody & Company for the years 1967, 1968 and 1969.

Q Please look at the folder marked Government Exhibit 83 for Identification. Tell us if you know what the documents which make up Government Exhibit 83 are?

A They are brokerage statements in the name of Dr. Robert L. Wolf representing his account with Eastman, Dillon-Union Securities & Company for the years 1966, 1967, 1968 and 1969, and there are also some checks here which were issued to Dr. Wolf by Eastman,Dillon-Union Securities & Company.

MR. LAWYER: We offer Government Exhibits 81, 82 and 83.

THE COURT: All right, show them to Mr. Appleman.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark them, Mr. Clerk.

xx [Government Exhibits 81, 82 and 83 received in Evidence]

Q I have placed before you Government Exhibits 541, 542 and 543 for Identification. Please look at the folder which is marked Government Exhibit 541. Do you know what Exhibit 541 for identification is?

A Yes.

Q What is it?

A It is an analysis of the payments which were made to Dr. Wolf by White Weld & Company during the years 1968 and 1969.

Q Does Government Exhibit 541 refer to the information in Government Exhibit 81?

A Yes, it does.

THE COURT: You mean it is based on it?

THE WITNESS: It is based on it, yes, your Honor.

THE COURT: In other words, it is a different statement of data which is found in this exhibit, 81?

THE WITNESS: That is correct, your Honor.

THE COURT: All right.

Q Who prepared Government Exhibit 541?

A It was partly prepared by another agent and partly by myself, but the work prepared by the other agent was verified.

Q By you?

A By me.

Q Would you look at the exhibit marked 542 for identification, sir? What is Government Exhibit 542 for Identification?

A It is an analysis of payments to Dr. Wolf by

Goodbody & Company during the year 1969.

Q Who prepared the analysis sheet, sir?

A I prepared this analysis sheet.

Q Is this information contained in Government Exhibit 542 for Identification based upon information in Government Exhibit 82 in Evidence?

A Yes, it is.

Q Is that reflected at the top of Government Exhibit 542?

A Yes.

Q Please look at the folder marked Government Exhibit 543 for Identification. What is 543 for identification?

A It is an analysis of payments made to Dr. Wolf by Eastman, Dillon-Union Securities & Company.

Q Is the information in Government Exhibit 543 based upon the information contained in Government Exhibit 83?

A Yes, it is.

Q Did you prepare Government Exhibit 543, sir?

A I prepared part of it butethe part I did not prepare was verified by me.

MR. LAWYER: We offer 541, 542 and 543.

THE COURT: Mr. Appleman, while you are studying that we will have to take a few minutes recess. I will have to excuse the jury.

Mr. Foreman, ladies and gentlemen of the jury, you may retire to the jury room.

[The jury left the courtroom]

THE COURT: We will resume in just a minute. I will have to make a telephone call.

[Recess]

THE COURT: All right, Mr. Clerk, would you get the jury, please.

[Jury present]

THE COURT: I believe we had the offer of three exhibits, 541, 542 and 543. Any objection?

MR. APPLEMAN: No objection.

THE COURT: Mark them.

xx [Government Exhibits 541, 542 and 543 received in Evidence]

Q I have placed before you four folders, Government Exhibit 84, 85, 86 and 87 all for Identification. Please look at Government Exhibit 84, sir. What are the documents in Government Exhibit 84, if you know?

A Government Exhibit 84 are photocopies of checks, paychecks, issued to Dr. Wolf by the Mt.Sinai Hospital during the year 1966.

Q Please look at the documents included in Government Exhibit 85 for Identification. What are the documents in Government Exhibit 85 for Identification, if you know, sir?

A They are payroll checks issued to Dr. Wolf by the Mt.Sinai Hospital during the year 1967.

Q Please look at the documents included in Government Exhibit 84. What are the documents included in Government Exhibit 84 for Identification, if you know?

A They are payroll checks issued to Dr. Wolf by Mt.Sinai Hospital during the year 1968.

Q Please look at the documents inlcuded in Government Exhibit 87 for Identification. What are the documents there, if you know?

A They are payroll checks issued to Dr. Wolf by the Mt.Sinai Hospital during the year 1969.

MR. LAWYER: We offer Government Exhibits 84, 85, 86 and 87.

THE COURT: 84 were the payroll checks for 1966?

MR. LAWYER: Yes, sir.

MR. APPLEMAN: No objection.

THE COURT: Mark them.

xx [Government Exhibits 84, 85, 86 and 87 received in Evidence]

B60

Q I have placed before you four folders marked Government Exhibits 544, 545, 546 and 547 for Identification. Please tell us, if you know, first what is Government Exhibit 544 for Identification?

A Government Exhibit 544 is an analysis I made of salary checks issued to Dr. Wolf by the Mt.Sinai Hospital and covers the year 1966. This exhibit relates to Government Exhibit 84.

Q By that you mean Government Exhibit 544 for Identification is based upon the checks included in Government Exhibit 84 in Evidence?

A That is right.

Q Please look at Government Exhibit 545 for Identification. What is Government Exhibit 545 for Identification?

A Government Exhibit 545 is an analysis of salary checks issued to Dr. Wolf by the Mt.Sinai Hospital during the year 1967 and relates to Government Exhibit 85.

Q Meaning that Exhibit 545 is based upon the information contained in the checks which are included in Government Exhibit 85?

A That is correct.

Q What is Government Exhibit 546 for Identification?

A Government Exhibit 546 is an analysis of salary checks issued to Dr. Wolf by Mt. Sinai Hospital during the year 1968 and relates to Government Exhibit 86.

Q What is Government Exhibit 547 for Identification?

A Government Exhibit 547 is an analysis of salary checks issued to Dr. Wolf by Mt. Sinai Hospital during the year 1969 and relates to Government Exhibit 87.

Q When you use the word analysis there do you just mean a chart or a schedule?

A I mean it is a listing.

Q A listing of the various checks?

A Each check that was issued to Dr. Wolf, and it shows the disposition of each of those checks.

MR. LAWYER: I offer Government Exhibits 544 thru 547 inclusive.

THE COURT: What do you mean by the disposition of the check?

THE WITNESS: I mean I show just what happened to that check; is it was deposited, for example, in Dr. Wolf's checking account or savings account or if it was cashed. I show that in the analysis.

THE COURT: Are you able to determine that from the check itself?

THE WITNESS: Yes, I was and also by tracing it in most instances to the particular bank account.

THE COURT: But is the data in these offered exhibits based entirely on the checks themselves which have been put in evidence or is it based also on some other exhibits?

THE WITNESS: On the checks themselves.

THE COURT: On the checks themselves?

THE WITNESS: Right, yes.

THE COURT: All right. Show them to Mr. Appleman.

MR. APPLEMAN: No objection.

THE COURT: Mark them.

xx [Government Exhibits 544, 545, 546 and 547 received in Evidence]

Q You have before you Government Exhibit 548 for Identification. Please look at Government Exhibit 548 and tell us what it is, sir, if you know?

A Government Exhibit 548 consists of an analysis of the professional income received by Dr. Wolf which was deposited in subsequent years.

Q What do you mean deposited in subsequent years, sir?

A If he received the payment, for example, in October of 1967 he may have held it and not deposited it until 1968 and under such circumstances the receipt of that income would be considered income in the year which he actually obtained the income. In this instance, by illustration, it would be income for 1967 and not income in 1968, the year in which it was deposited.

Q For what year would it be taxable income?

A It would be taxable income for the year 1967.

Q You have before you Government Exhibit 48A and 48B, both of which are already in evidence. Please look at those, sir.

48B contains various checks; is that correct?

A Yes, that is correct.

Q And 48A contains various deposit slips based upon those checks; is that correct, sir?

A That is correct.

Q Did you personally correlate the dates included on the checks in 48B with the deposit slips included in 48A?

A Yes, I did.

Q Did you determine that the checks included in 48B were received or at least were dated as having been issued in 1969?

MR. APPLEMAN: I object. The checks can be dated and they don't have to have been issued. If the checks were dated in October, that does not mean they were issued in October.

THE COURT: I will sustain the objection as to form. They are dated. All right.

Do you want to start over again, Mr. Lawyer?

MR. LAWYER: Yes, sir.

Q In what years, based upon Government Exhibit 48A in Evidence, were the checks included in Government Exhibit 48B deposited?

A 48A shows deposits made on January 7, 1970 in Barclays Bank in New York City.

Government Exhibit 48B shows various checks which were deposited on that particular date in that account, that is, on January 7, 1970.

Q In what year are the checks included in Government Exhibit 48B dated, sir?

A 1969, the year 1969.

MR. LAWYER: I offer Government Exhibit 548, your Honor.

MR. APPLEMAN: With regard to this schedule, we have a heading on it to which I object.

THE COURT: All right, may I see it?

You object to the word "Received"?

MR. APPLEMAN: "Received" and "Income Received" should be "Check Dated".

MR. LAWYER: We will agree to change the headings to "Year Checks Dated", and as so amended the exhibit is received in evidence.

THE COURT: All right. And you can make that change, Mr. Lawyer, physically.

MR. APPLEMAN: Can we also have "Year Check Deposited", not income deposited?

MR. LAWYER: I have no objection to that, sir.

THE COURT: All right.

xx [Government Exhibit 548 received in Evidence]

Q I have placed before you Government Exhibits 554, 555, 556, 557, 558 and 559, all for Identification. Please look at the folder marked Government Exhibit 554.

What is Government Exhibit 554, if you know, sir?

A Government Exhibit 554 is an analysis of checks issued by the United Medical Service, Incorporated to Dr. Wolf in the year 1966 and it relates to Government Exhibit 62C.

Q Please look at the exhibit marked Government Exhibit 555 for Identification. What is Government Exhibit 555 for Identification, if you know?

A Government Exhibit 555 is an analysis of checks issued by the United Medical Service, Incorporated to Dr. Wolf in the year 1966. These are Blue Shield checks.

Q Please look at Government Exhibit 556 for Identification. What is Government Exhibit 556?

A Government Exhibit 556 isaa listing of the Blue Shield Medicare checks issued by United Medical Service, Incorporated to Dr. Wolf in the year 1967 and it shows a disposition of these checks. It relates to the schedule of Government Exhibits 63C and 63D.

B61 Q What is Government Exhibit 557 for Identification, if you know?

A Government Exhibit 557 is a listing of Medicare checks issued by the United Medical Service, Incorporated to Dr. Wolf in the year 1968 and it relates to Government Exhibit 64D.

Q What is Government Exhibit 558 for Identification, if you know?

A Government Exhibit 558 is a listing of Blue Shield checks issued by United Medical Service, Incorporated to Dr. Wolf during the year 1969 and relates to Government Exhibit 65C.

Q What is Government Exhibit 559 for Identification?

A Government Exhibit 559 is a listing of Medicare checks issued by United Medical Service, Incorporated to Dr. Wolf in the year 1969 and relates to Government Exhibit 65D.

Q Were Government Exhibits 554 thru 559 inclusive, sir, that is, the information contained in them, all verified by you personally based upon the exhibits in evidence?

A Yes.

MR. LAWYER: We offer 554 thru 559.

THE COURT: All right, show them to Mr. Appleman.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark them.

xx [Government Exhibits 554 thru 559 inclusive received in Evidence]

Q I place before you Government Exhibit 561 for Identification. Tell us what 561 is, if you know, sir?

A Government Exhibit 561 is a listing of mail transfers of funds by the Barclays Bank in 1969 to the Union Bank of Switzerland in Zurich, Switzerland which was credited to the account of Dr. Wolf with the Barclays Bank.

Q What exhibit is 561 based on?

A It relates to Government Exhibit 49.

THE COURT: Mr. Skolnick, you said it was credited to his account at Barclays Bank. I would have thought if they were transferring money to Switzerland it would be debited.

THE WITNESS: I wish to correct my -- It was a debit, yes. It was credited to his account in Switzerland.

THE COURT: Credited to his account in Switzerland, and debited to his account here?

THE WITNESS: That is correct.

Q Who prepared Government Exhibit 561?

A I prepared this.

MR. APPLEMAN: No objection, your Honor.

THE COURT: All right, mark it.

xx [Government Exhibit 561 received in Evidence]

Q You have before you Government Exhibit 562 for Identification. What is 562 for identification, if you know?

A Government Exhibit 562 for Identification is a summary of identified deposits not from professional income and nontaxable bank credits which resulted from an analysis of Dr. Wolf's bank deposits.

Q Who prepared 562, sir?

A I prepared it.

Q What exhibits in evidence is 562 based on?

A Based on Government Exhibits 20 to 21C, 24 thru 28, 30 thru 36, 40 thru 49, 50 and 51, 55, 56A, 524 thru 527, 528 thru 535, 537, 538, 539 and 540.

MR. LAWYER: I offer 562.

MR. APPLEMAN: No objection, your Honor.

THE COURT: Mark it.

xx [Government Exhibit 562 received in Evidence]

MR. LAWYER: Your Honor, at this time we ask permission to show for purposes of illustration in the event the jury should at anytime wish to see any of the exhibits that Mr. Skolnick prepared to allow them at this time to see a sampling of the documents. We have prepared copies for each juror.

THE COURT: I don't think, Mr. Lawyer, we need to take that time at this point.

MR. LAWYER: Could we do it with just one of the exhibits, maybe?

THE COURT: All right, can you pick out one?

MR. LAWYER: Yes, 524. We will do it for illustration.

THE COURT: You can certainly argue it in summation and I will tell the jury if at anytime in their deliberation they wish to see copies they may ask for them.

Mr. Clerk, please give the jury 524.

Is that right, Mr. Lawyer?

MR. LAWYER: Yes, your Honor.

THE COURT: All right.

Mr. Skolnick, do you have Government Exhibit 425 before you?

THE WITNESS: Yes, I do, your Honor.

THE COURT: What does the column headed "Unidentified" mean?

THE WITNESS: "Unidentified" means that I did not identify it as to a particular payor. The source of the issuer of that particular check is unknown.

THE COURT: And taking the first line, January 6, do I read correctly that that is $1,075.90?

THE WITNESS: Yes, that is the amount of the total deposit on that date.

THE COURT: And 6000 means $60., not six thousand?

THE WITNESS: That is correct.

THE COURT: These are dollars and cents?

THE WITNESS: That is right, your Honor.

THE COURT: And the unidentified means you couldn't tell from what source the $60. came?

THE WITNESS: That is right.

THE COURT: All right.

MR. LAWYER: Does the Court have other questions or may I proceed?

THE COURT: No, you may proceed.

Q Mr. Skolnick, are the various other schedules that have been put into evidence before you which you also referred to as analysis sheets, sometimes as charts, are they substantially similar in organization to the other exhibits?

A That is right.

Q At the extreme left of Government Exhibit 524, in the extreme left column where it says "Date" and then 1966, that refers to the tax year, sir?

A That is right.

Q And the dates that follow in that column, what are the dates that follow under the --

A Those are the particular dates on which the deposits were made in the Chemical Bank checking account.

Q And the next column which says "Total Deposit", sir, is that t total sum of the deposit based upon various checks that you were able to trace?

A That is right. That was a total deposit as indicated on the deposit ticket.

Q And the various numbers beginning on page 1 which says 16 and 25, 15, 1775, sir, does that refer to individual checks included on the deposit ticket?

A That is correct.

Q So if the jury wishes to examine any other exhibits they would be substantially the same as this one in organization; is that correct?

A Yes, although on later exhibits there are more identified deposits.

MR. LAWYER: I am ready to proceed again, your Honor.

THE COURT: All right, Mr. Clerk, will you take the exhibits from the jurors.

Q I have placed before you Government Exhibit 516A in Evidence. Do you know what 516A in evidence is, sir?

A Yes.

Q What is it?

A It is a work paper of William McGuire who in 1969 was a Revenue agent of the Internal Revenue Service and it shows the data which was claimed by the taxpayer's representative as being loans -- Shows that certain deposits in the Chemical Bank checking account were loans from Dr. Wolf's mother. That was the contention..

B62 Q Did you trace the amount listed, sir?

A Yes.

MR. APPLEMAN: Your Honor, I must object to this. I think that Revenue Agent McGuire would be the best one to testify as to this.

THE COURT: I think you are right, Mr. Appleman. I will sustain your objection.

MR. LAWYER: I think all we are talking about is the last statement. I will consent to that being stricken.

THE COURT: All right.

Q Did you yourself trace the amount, sir, listed on this sheet?

A Yes, I did.

Q Tell us what you did.

A I examined the deposit tickets for these particular amounts and I found that with the exception of the $3,000. item all the others consisted of a large number of check deposits ranging from ten checks to twenty-five checks for the individual deposits. I found that the $3,000. deposit came from what was a transfer of funds from a savings account maintained by Dr. Wolf and there was no indication for a long period prior to that withdrawal that there were any large deposits in this particular savings account.

I also found that the amount listed here allegedly as a loan of $985. was in fact a check issued by Dr. Wolf to his mother and was a withdrawal rather than a deposit to the Chemical Bank checking account.

In essence, from the nature of the deposits it did not appear that these could in any way have been loans from anyone.

Q I show you Government Exhibit 516B for Identification. What is that, sir?

A Government Exhibit 516B is an analysis of loans claimed made by Mrs. Rae Wolf, mother of Dr. Wolf, allegedly deposited in the Chemical Bank checking account in 1966.

Q Are those the same loans or alleged loans that you referred to with respect to Government Exhibit 516A?

A Yes.

Q Who prepared 516B, sir?

A I did.

MR. APPLEMAN: Your Honor, I again object due to the fact that these were not statements made by the defendant. These were statements made by the accountant and they are now, what they are now doing is attempting to corroborate information submitted by the accountant and not the defendant without showing the fact that the defendant either made or acutally agreed to the fact that these were the representations made.

THE COURT: No. But I think there is evidence from which the jury could find that the accountant was the agent of the defendant and I think statements by an agent can be received as against the principal.

MR. APPLEMAN: If the principal has actually made those statements.

THE COURT: No, I don't think that has anything to do with it at all. I think if a man appoints an agent to act for him the agent's statements are the statements of the principal.

MR. APPLEMAN: Unless the agent has exceeded his authority.

THE COURT: Well, an agent for the purpose of acting with the Internal Revenue Service -- I should think any statement that he made would be within his authority. I will permit it.

xx [Government Exhibit 516B received in Evidence]

Q I show you Government Exhibit 48 in Evidence. Do you recognize that, sir?

A Yes, I do.

Q What is it?

A It is a photocopy of a check which Dr. Wolf issued to his mother, Rae Wolf, under date of 11/25/66 in the amount of $985.

Q Does the check which makes up Government Exhibit 48 in Evidence refer to one of the alleged loans to Dr. Wolf which is listed on 516B?

A That is correct.

Q After you compiled all of your various information and made your various schedules, one of which the jury has seen, did you prepare a final chart reflecting all of the information?

A Yes, I did.

Q I show you Government Exhibit 7 for Identification. Is that the final chart that you prepared, sir?

A Yes, it is.

MR. LAWYER: We offer Government Exhibit 7 as an aid to the jury.

THE COURT: Mr. Skolnick, I am showing you this offered Exhibit No.7. I notice that you have deducted salary income from Mt.Sinai Hospital. I don't really understand that deduction because wouldn't salary from Mt.Sinai Hospital be taxable income?

THE WITNESS: Yes, it is taxable income but it is not part of his Schedule C income, income from his private practice as a doctor. The salary income pertains strictly to the work he was performing at Mt.Sinai and was being paid as an employee of Mt.Sinai Hospital, your Honor.

THE COURT: So it would be shown on some schedule of the return other than Schedule C?

THE WITNESS: That is correct, and I eliminated, I deducted it from his bank deposits so that it wouldn't be counted twice because it is not income from his private practice and we don't want to charge him for that income.

THE COURT: All right. Mr. Appleman, have you seen this?

MR. APPLEMAN: Yes, I have. I am looking at it again. The only thing is the title "Summary of Unreported"-- A summary of deposits as compared to income but not summary of unreported.

MR. LAWYER: I am willing to interpolate "Summary of Alleged Unreported Income", if that will solve it.

THE COURT: I will permit it.

xx [Government Exhibit 7 received in Evidence]

MR. LAWYER: May I show it to the jury and explain it?

THE COURT: Yes. I will say to the jury, as I will have occasion to repeat in my instructions, this offered Exhibit 7, which has been received, is not in addition to, it is not evidence in itself. It is just a statement based on other exhibits in evidence and it is offered simply for the convenient use and consideration of the jury.

In other words, to the extent that the jury should find that the other exhibits which are in evidence do not support this summary, of course the summary is valueless and should be disregarded. To the extent that the other evidence does support it, of course the jury can take that into account.

Q Do you have a copy of Exhibit 7?

A Yes.

Q Could you please explain your chart, Exhibit 7, to the jury, please?

A Yes. I have listed on the left-hand side the bank deposits to all the bank accounts which we had information and I show under the captions for the years 1966, 1967, 1968 and 1969 the total deposits in each bank account during the particular years. When I totaled the deposits in all the bank accounts and I then reduced those total deposits by identified deposits which were not from the professional income and also any nontaxable items included in those deposits.

Q Do the various sums then which are opposite the language which begins "Deduct identified deposits not from professional income and nontaxable items" mean that any of those numbers adjacent to that column, sir, were not considered as taxable income?

A Were not considered professional income or nontaxable income. It contains both those elements.

Q That means you reduced it from the total amount with which the defendant was charged with failing to report?

A Like the salary income is taxable income, but it is not taxable income as far as the professional income is concerned.

B63 Q You mean Mt.Sinai income was not considered the same as his office income?

A Right, that is correct.

Q The Mt.Sinai income was taxed at the source level, that is, before it got to the Doctor; is that correct?

A Yes.

THE COURT: You mean by withholding taxes?

THE WITNESS: By withholding taxes.

THE COURT: I understand.

Q How about "Transfers, Bank Accounts"; explain that for us?

A The "Transfers, Bank Accounts" -- There were moneys taken out of certain of his bank accounts and deposited in some other bank accounts which he maintained and they were eliminated so there would be no duplication of amounts.

Q By duplication you mean so that Internal Revenue would not count the amounts twice?

A That is correct.

Q How about "Transfers, Brokerage Accounts", what does that line refer to, sir?

A That refers to payments that Dr. Wolf received from various brokerage firms which were deposited in his bank accounts and they were eliminated in the computation so that they would not be considered as professional income.

Q So that Dr. Wolf is not charged with having failing to report any of the money included opposite "Transfers, Brokerage Accounts"; is that correct?

A That is correct.

Q "Refunds and Loans," what does that refer to, sir?

A That refers to items identified in the deposits which were either repayment of a loan -- For instance, in 1968 I recall that was a repayment of a loan that he had made to some individual, $300., and in 1969 they were refunds. I believe that -- I remember that one was a large amount of traveler's checks which he had purchased and redeposited in his account and another was a refund from A&S Department Store and they were eliminated from the deposits because they are not taxable income.

Q How about the next line "Bank Credit Memoranda", what does that refer to?

A They were credits that the bank entered in his account and were listed in the deposits, so they were eliminated so as not to include that in the professional income.

Q Are the numbers under the heading of Government Exhibits on the extreme right of Exhibit 7 -- That is, on the extreme right of a person holding the exhibit -- Does that refer, sir, to the Government exhibits in evidence to which, if a person wanted to trace information, he could find it there?

A That is correct.

Q There is a line in Government Exhibit 7 which says "Professional Income Deposits". Is that the total minus the nontaxable items?

A That is correct.

Q What does the line "Add professional income deposited in subsequent year" refer to?

A Those are the amounts which were received in a particular year but not deposited until a subsequent year and they were added to the deposits in the year in which they belonged, and the sums, the amounts which are represented by these figues were deducted in the years from the deposits in the years in which they were deposited.

Q Was this all pursuant to making sure that the money was counted as income for the year in which received?

A That is correct.

Q The line saying "Less professional income deposited received in previous years", what does that refer to?

A That refers to the deduction of the deposits in those particular years wherein which they were deposited but not income in those years.

Q What is the next line entitled "Payments in checks and checks cashed in payment" --

THE COURT: May I interrupt a little bit here?

MR. LAWYER: Yes.

THE COURT: Mr. Skolnick, I followed your explanation as far as 1967 is concerned, because that matches precisely, and as far as 1968 is concerned, but when I get to 1969 I see that you have deducted $864.80 and I would have thought that you would have deducted $944.80. It is a relatively small point. Do you see that?

THE WITNESS: Yes. One of the particular amounts was not deposited until the year 1970, one particular check.

THE COURT: In other words, in a series of checks which, according to their dates indicated they were received in 1968 --

THE WITNESS: That is correct.

THE COURT: -- which aggregated $944.80. Then when you looked at 1969 to see whether they were all deposited you found that $864.80 of them had been deposited but that others were deposited in other years, in later years?

THE WITNESS: That is right.

THE COURT: In 1970?

THE WITNESS: That is right, one particular check, one check.

THE COURT: Now, Mr. Lawyer, I interrupted you.

Q The line which is entitled "Total professional income", sir, and the sums which are on the same line with that title, that refers now, does it not, to the total income that you were able to trace to Dr. Wolf as having received from his office practice; is that correct?

A That is correct.

Q That exclusive of Mt.Sinai salary and income; is that correct?

A That is correct.

Q And exclusive of the various deductions which you just explained above, that is, the nontaxable items; is that correct?

A That is so.

Q Now, the line saying "Reported professional income", what does that refer to?

A That refers to the gross receipts reported on Schedule C of Dr. Wolf's tax returns for the years 1966, 1967, 1968 and 1969.

Q Referring to Government Exhibits 1 thru 4 in Evidence?

A That is right.

Q So the line which says "Reported professional income" is what is on the tax return and the line immediately above it, which says "Total professional income" is what the Internal Revenue Service says really is what the figure was?

A That is right.

Q The line that says "Balance", is that simply a subtraction?

A The difference between those two amounts.

Q The difference between reported professional income and total professional income?

A That is right.

Q Would you explain the line which says "Less balance of Mt.Sinai salary", sir?

A After I prepared my report it went thru a regular process of reviews and when it was reviewed by Regional Counsel of the Internal Revenue Service they decided that even though much of the salary checks that Dr. Wolf received from the Mt.Sinai Hospital could not be identified as being deposited in his Chemical Bank checking account, business account, they decided to give him the -- make the allowance of the remainder of the checks that he received just to make certain that he is given every possible credit.

Q Is that to say that any checks that you could not in fact find or trace you gave Dr. Wolf credit for anyway and reduced it from his total income?

A A good deal of it, yes.

B64 Q That only refers to take-home pay, does it not?

A That is correct, the net payments that he received.

Q Net take-home pay from Mt.Sinai?

A That is correct.

Q That was true for what years?

A For the years 1966 and 1967.

Q Why is there nothing in the column for 1968 and 1969?

A For the years 1968 and 1969 I was able to trace the checks as being deposited in his checking account.

Q What does the line which says "Cash fees and check fees cashed" refer to?

A Those were fees that Dr. Wolf received based on information from payors of fees and also from a review of checks which the payors issued to Dr. Wolf which were cashed by him, and the Regional Counsel here again felt that this cash could have been some way gone into his bank accounts and they felt that my figure should be reduced by these particular amounts so to avoid any duplication should cash deposits have been made at anytime.

Q That is not to say that you didn't count the cash, it is just simply to say that you sought to avoid counting it twice?

A That is correct.

Q Does that also, sir, indicate that you and your superiors were of the opinion that perhaps the cash was deposited into another bank account as cash and therefore you just simply counted only one bank account?

MR. APPLEMAN: I object to that.

MR. LAWYER: I will withdraw the question.

THE COURT: All right.

Q What does personal checks cashed by Dr. Wolf refer to?

A They refer to checks which Dr. Wolf drew on his account with the Chemical Bank.

Q His own personal checks?

A His own personal checking account. They were made payable to cash or to himself, which he cashed and those amounts were reduced -- those amounts were used to reduce the total figures that we had for Dr. Wolf in those years on the assumption there again that perhaps they could have been deposited in total in one of his bank accounts, even though we had no information actually that these were not used for personal expenditures.

Q Does that say you gave Dr. Wolf the benefit of the doubt on that figure?

A That is correct.

THE COURT: Because orginarily a person who goes to the bank and cashes a check would get it for ordinary day-to-day disbursements, wouldn't he?

THE WITNESS: That is correct. However --

THE COURT: Lunch, subway and so forth, taxis if one doesn't ride the subway?

THE WITNESS: That may be true, but nevertheless in the computation they felt to avoid duplication they would go on the assumption that even though he was living in a high cost area and had a lot of personal expenses that he must have paid for with cash, they went on the assumption--

THE COURT: He redeposited it in some other account?

THE WITNESS: We took that assumption to be perfectly safe. We do that as a practice very often.

THE COURT: All right.

Q Mr. Skolnick, would you go back up to the line which says "Payments in cash and checks cashed from professional income not deposited". I don't believe you covered that. Would you explain that line?

A "Payments in cash and checks cashed from professional income not deposited" were those payments which payors of checks, fees patients paid to Dr. Wolf and they had presented cancelled checks which showed that these checks in the main were cashed by Dr. Wolf and they are also cash payments to him. Even though we have this information for these amounts they were eliminated from his deposits in this calculation by the Regional Counsel of the Internal Revenue Service to make certain that he is not charged twice if he had deposited these sums in the bank account.

THE COURT: Apparently it is like the personal checks cashed by Dr. Wolf - You just assumed that he redeposited the currency.

THE WITNESS: That is correct. The reason for that is, particularly in 1968 and 1969, there were currency deposits but not in the Chemical Bank checking account where in the four years there was only one currency deposit of $25. for the four year period which was identified as not being from, you know, a transfer of funds or anything of that type. It was only a $25. deposit in the Chemical Bank checking account of currency.

THE COURT: Wherever Dr. Wolf got a check in payment for fee and the check indicated that it had been cashed, turned into currency, not deposited, you assumed that the currency obtained by cashing the check was redeposited in some bank account?

THE WITNESS: Yes, that is correct, your Honor.

THE COURT: So you haven't charged that as claimed unreported income?

THE WITNESS: Not in the form that we have it here.

THE COURT: All right.

Q The whole point of that, sir, is simply to make sure that you don't count the money twice?

A That is correct.

Q Look at the line "Professional income received deposited in brokerage account". I failed to ask you about that one before, so please explain that one.

A Yes. That represents official checks and personal money orders which Dr. Wolf purchased from the Chemical Bank and which was paid for in cash. These checks were all made payable to the Goodbody & Company brokerage firm and were received by them in payment of stock purchases by Dr. Wolf.

Q With respect to your testimony so far, if the jury should wish to trace back your analysis and your charts and the information about which you have just testified would they find it in the Government Exhibits list which is on the right-hand side of the exhibit, sir?

A Yes, they would.

Q Go to the second line from the bottom, sir, which says "Total additional deductions". What does that refer to?

A That refers to the deductions that was decided upon by the Regional Counsel of the Internal Revenue Service and we used to reduce my figures by those amounts.

Q Was that to guarantee again that nothing was counted twice insofar as they could determine?

A That is correct.

Q What is the very last line, "Unreported professional income"?

A That is the determination of what Dr. Wolf had failed to report in his gross receipts for the years 1966, 1967, 1968 and 1969 in the amounts indicated.

Q All of that referred to as office income, that is his office practice?

A That is correct.

Q That is what you have been referring to as professional income as distinguished from his hospital salary?

A It is to be distinguished from his hospital salary.

MR. LAWYER: May I have just a moment, your Honor?

THE COURT: Of course.

[Pause]

MR. LAWYER: I have no further questions.

THE COURT: All right.

B65 CROSS-EXAMINATION

BY MR. APPLEMAN:

Q Mr. Skolnick, will you please relate as to the divisions encompassed by the Internal Revenue Service? What three divisions are there in the Internal Revenue Service?

A Collection Division, Audit Division and Intelligence Division.

Q What is the function of the Collection Division?

A The Collection Division essentially is the collecting arm of the Internal Revenue Service and the Audit Division is assigned primarily in the auditing of the tax returns filed by individuals and corporations, and the Intelligence Division investigates possible criminal violations of the Internal Revenue Laws.

Q Do you think it would be sufficient to say that the Collection Division goes out and gets money which is due Uncle Sam which is not collected voluntarily from the taxpayers? Do you think that would be a good explanation of what the Collection Division does?

A Essentially that would be so.

Q And the Audit Division has the responsibility for the determination of the correct tax liability of taxpayers chosen for audit?

A That is right.

Q And the Intelligence Division is responsible for the criminal prosecution or is the enforcement arm of the Internal Revenue Service; is that correct?

A That is correct.

Q So, therefore, no matter what happens here Mr. Wolf's returns will still be subject to audit review?

MR. LAWYER: Objection.

THE COURT: Sustained. This is a criminal case. The tax liability of the defendant is not in issue here; whether he has paid or hasn't paid, whether he will pay or won't pay.

Q Will you please state the date on which the Intelligence Division initiated this investigation?

A This investigation was started sometime in the early part of 1970. I don't recall the exact month or day, but the records will show that. But I know it is the early part, might be February or March of 1970.

Q Would the activity records in the case files --

A Yes, the case files would show the date of the initiation of the investigation.

Q Do you have that activity record with you?

A No, I don't.

Q Can you please obtain that activity record?

MR. LAWYER: Your Honor, why is it necessary? May I ask if perhaps he has his special agent's report whether that would show the date?

THE COURT: If there is any way we can get the information without having to stop the trial that would be the most satisfactory way.

Would you report show it?

MR. APPLEMAN: No, your Honor.

THE WITNESS: I don't believe my report shows the specific date.

Q How far away is it?

A Beg pardon?

Q How far is this activity record or activity file?

A It is contained in the file in my office.

Q Is that near here? Can we send somebody to telephone for it?

A I guess we could. I could go over and get it myself.

THE COURT: All right, when we finish everything else we will ask the witness to go and get it.

Q You were not the original agent assigned to this investigation, were you?

A No, I was not.

Q There were prior agents assigned to this investigation; is that it?

A That is correct.

Q You would not know of their activity with regard to their investigation of this case without looking at the activity record; is that correct?

A I know generally about how much they did on it.

Q I am talking about the dates. You would not know the date, in other words, the investigation was initiated, the date the special agent notified Agent McGuire as to the initiation of this inquiry?

A Those dates would be reflected in the activity sheet, yes, which is a continuation from one agent to another. They would be in one place.

Q That activity record always follows the case file no matter who gets the case, no matter which agent is assigned the case, so that the prior agent's activity is recorded therein?

A That is correct.

Q When was Mr. Edelstein first contacted by the Intelligence Division?

A He was first contacted -- Well, Mr. Edelstein was not contacted by the Intelligence Division. A letter was sent to Dr. Wolf and no response was received from Dr. Wolf, but Mr. Edelstein did call on behalf of Dr. Wolf.

Q When was this letter sent to Dr. Wolf?

A I'd have to, if I may, refresh my recollection and look at my reports.

The initial contact letter was sent September 17, 1970.

Q Prior to that attempt at initially contacting the taxpayer, was there any conversations between the Intelligence Division and Revenue Agent McGuire?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q With regard to a special agent conducting an investigation, what is the duty owed to the taxpayer in general and specifically this taxpayer.

MR. LAWYER: Objection.

THE COURT: Sustained.

Q In your duties as a special agent is there a manual setting forth your duties and obligations?

A Yes, there is a manual.

Q What is this manual called?

A It is a handbook for special agents.

Q What is spelled out in this special agents' handbook?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q During the course of your investigation did you determine the education and background of the defendant?

A Yes, I did.

Q Did the defendant attend a medical school?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Did your investigation show that the defendant attended medical school?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Is it a violation of any section of the Internal Revenue Code to cash checks?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Is it any violation of the Internal Revenue Code to have foreign bank accounts?

MR. LAWYER: objection.

THE COURT: Sustained.

Q Was the Doctor's income tax return audited in 1965?

A To my knowledge, I don't really know the answer to that question.

MR. LAWYER: May I just ask for clarification: Was what income tax return audited in 1965?

MR. APPLEMAN: The income tax return filed by Dr. Wolf for the year 1965.

THE COURT: For the calendar year 1965.

MR. LAWYER: All right.

A I can only answer that by saying that I believe there may have been a correction in that return - made in that return. I don't know if I would classify it as an audit, but I would have to say that I am not sure of that at this point.

Q What do you mean, that you have to classify it as an audit?

MR. LAWYER: Objection.

THE COURT: I will permit it. Overruled.

A I can't really answer that. I'm not sure.

Q Did Mr. Edelstein prepare the income tax return for 1965?

MR. LAWYER: Objection.

THE COURT: I will permit it.

A I wouldn't know. I don't know.

Q However, Mr. Edelstein did prepare the returns for the years 1966 thru 1969; is that correct?

A That is correct.

Q Did your investigation disclose that the Doctor is a sought-after speaker for medical conventions?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Did Mr. Edelstein sign all of the returns he prepared for Dr. Wolf?

MR. LAWYER: Objection unless it is limited in years.

B66 Q For the years 1966 thru 1969.

THE COURT: All right.

A Yes, he did.

Q This signifies what in the Internal Revenue Service?

MR. LAWYER: Objection.

THE COURT: I think I will have to sustain the objection. The returns are signed, which speak for themselves.

MR. APPLEMAN: Yes, except --

THE COURT: All right, you can make your argument to the jury on the basis of the returns. They are in evidence as Exhibits 1 thru 4.

MR. APPLEMAN: That is correct, your Honor.

Q Are accountants and attorneys qualified to practice before the Internal Revenue Service bound by a set of rules promulgated by the Internal Revenue Service?

A Attorneys and certified public accountants and accountants who pass certain qualifying tests may also be issued Treasury cards and hence be qualified to practice before the Treasury Department.

Q Are those people qualified to practice before the Treasury Department bound by any rules or obligations set forth by the Internal Revenue Service or the Treasury Department?

A Yes, they are.

Q Where can those rules be found?

A There is a bulletin, a regulation in published form that sets forth the rules that apply to attorneys, certified public accountants and those who hold Treasury cards.

Q Would that be known as Treasury Department Circular No.230?

A I believe that is the old number. I don't know if it has been revised of recent date.

Q I show you Defendant's Exhibit G in Evidence. Is that the Treasury Department circular that we are making reference to?

A That is correct.

Q If any violation of Circular 230 occurs, is there any internal way in which an investigation arises?

MR. LAWYER: I will object. The question is too broad.

THE COURT: Sustained.

Q If there is a violation of the Circular 230, would some arm of the Treasury Department initiate an investigation?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q In Circular 230, paragraph 1022, pertaining to diligence as to accuracy in the preparation of return there is stated as follows:

"Each attorney, certified public account or enrolled agent shall exercise due diligence in determining the correctness of oral or written representations made by him to the Internal Revenue Service; and

"[C] In determining the correctness of oral or written representations made by him to clients with reference to any matter administered by the Internal Revenue Service."

Are you aware of this, sir? Are you aware of this requirement made as to the role of practitioners?

A Yes, I am.

Q Any violation of this section of Circular 230 would subject a practitioner to action by the Internal Revenue Service; is that right?

MR. LAWYER: Objection.

THE COURT: I will permit it.

A Yes, it would.

Q Was it ever the duty of special agents to investigate possible violations of this section of Circular 230?

A Yes, it was.

Q When were special agents responsible for that duty, until what time?

A I wouldn't know the exact date of termination.

Q Would it be approximately 1956, 1957?

A I wouldn't know. I don't remember.

Q During your service as a special agent did you ever conduct an investigation?

A No, I did not.

Q Was such an investigation ever assigned to you during your service with the Internal Revenue Service as a special agent?

A No, it never was.

Q During your investigation of Dr. Wolf did there ever come a time that you questioned Mr. Edelstein?

A Yes.

Q And did that questioning involve the preparation of Dr. Wolf's 1966 thru 1969 income tax returns?

A Yes.

Q What did he say to you regarding the recording of Dr. Wolf's gross income on his 1966 thru 1969 income tax returns?

MR. LAWYER: If the question could be broken off, I wouldn't have any objection. It is very broad.

THE COURT: I will permit it.

A He told me that all the figures for the income, the gross receipts that were shown on Dr. Wolf's tax returns in Schedule C, he got those, that information, from Dr. Wolf. Dr. Wolf basically prepared the figures for him.

Q How did Dr. Wolf prepare these figures for

Mr. Edelstein?

A There were different situations in each year and I would have to discuss it separately in each year as to what --

Q As to 1966.

A I would have to, if I may, refresh my recollection by referring to my report.

Q Please.

THE COURT: Do you have the answer now, Mr. Skolnick?

THE WITNESS: Yes.

THE COURT: All right.

A For the year 1966 Mr. Edelstein did not have any work sheets pertaining to his preparation of Dr. Wolf's return for that year, but he did say that the figures for the gross receipts came from Dr. Wolf as well as the information regarding any bank interest or stock transactions; that he actually did not see the savings passbooks or anything of that nature and that he did not see Dr. Wolf's actual checking account or cancelled checks at all in the preparation of the returns. In the absence of that information from him he could not produce any documentation on, you know, what was the basis for the preparation of that return.

Q Did he relate that every year that he prepares a return it is his usual practice to obtain a signed statement from the taxpayer with regard to the income deductions claimed on the return?

A I believe that an accountant who prepares a tax return for the taxpayer and doesn't determine on his own initially the basic information that goes into the return; if he does not do this, if he depends on the information he gets from the taxpayer he usually requires a statement from him stating that the return was prepared on the basis of the information furnished.

Q Based on the information furnished to you by Mr. Edelstein, did he determine on his own the correctness of the amount claimed on the return as income?

MR. LAWYER: Did who determine?

MR. APPLEMAN: Mr. Edelstein.

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Did Mr. Edelstein state that he had a signed statement from the taxpayer for each of these years that he prepared a return?

A I did not ask him the question and he did not make that statement to me.

Q Did Mr. Edelstein have work papers with regard to the income shown on the taxpayer's 1967 return?

A Which particular year?

Q 1967.

A Yes, he had -- May I refresh my memory, first, if I may?

Q Yes.

[Pause]

THE COURT: Do you have the answer?

A Yes. It gets a little sticky, complicated in this year. If I may, I would like to -- As I go along I would like to refer to my report.

B67 Q Would you please tell us?

A Mr. Edelstein showed me for inspection analysis sheets in which were listed check deposits totaling -- That is, in the Chemical Bank checking account -- $51,499.81. My addition of those deposits showed a variance of only $88.18. In this work sheet these deposits were captioned as receipts. However, on the taxpayer's returns the gross receipts shown were only $29,212.41.

Now, Mr. Edelstein showed me a letter. On the reverse side of it was a statement which, if I may quote from my report, read as follows in part:

"The following information is to be used in preparation of my 1967 income tax returns."

This was followed by a listing of figures showing a single item of income of $29,212.41, several items of deductions totaling $26,113.19, and the net profit resulting therefrom of $3,099.22.

Below the listing of these figures were indicated Wolf's signature and it was written twice. The amount that was listed on this letter of gross receipts of $29,212.41 was the figure that was shown on Dr. Wolf's Schedule C as being his total receipts; that is, the gross receipts before deductions of $29,212.41.

Q Was there any date on the back of the letter as to when it was prepared and when it was signed? Do you have that?

A I would have to see the letter.

MR. LAWYER: It is in evidence.

A I would like to refresh my recollection on that.

THE COURT: What is the number of the exhibit?

MR. LAWYER: Government Exhibit 12 in Evidence, your Honor.

THE COURT: All right.

A There was only a date on the face of the letter, the date of March 18, 1968, and this letter is on the stationery of Dr. Robert Lawrence Wolf and is addressed to Mr. Ben Edelstein, Empire State Building, 350 Fifth Avenue, New York, New York.

Q Was this letter written or typed?

A Part of the letter is typed and part has some handwriting on the face of it.

Q As to the part that has the handwriting, we have two notations on the front of the letter. One part is "Also enclosed - please note other side," and on the bottom it says "P.S. Please return it to me. It is my only copy."

Is that the same handwriting, sir?

A I am not a handwriting expert so I can't answer your question.

Q Looking at both handwritings, in your considered opinion is that the same handwriting?

MR. LAWYER: I will stipulate that it does not appear to be the same handwriting. But how does he know?

THE COURT: All right. Suppose we take a morning recess now for a few minutes.

[Recess]

Q Referring to Exhibit 12 in evidence, realizing that you are not a handwriting expert, did you have anyone analyze to see if it was in the Doctor's handwriting? Did you have anyone to analyze the handwriting to determine if the assertions made in the back of this letter were in the Doctor's handwriting?

A I did compare the signature on this letter with the signatures on the returns and I found them to be similar.

Q In other words, you are a handwriting expert when you look at a return and you look at the signature of this letter, but when you look at the handwriting which indicates the amount to be reported you are not a handwriting expert as far as that is concerned; is that right, sir?

A That is correct.

Q Very interesting.

MR. LAWYER: Your Honor --

THE COURT: No comments, please.

Q I wish to show you Defendant's Exhibit E in Evidence. Have you ever seen that document before?

A I never saw the document on the top headed "Income Tax Information", but I believe I saw the letter that is attached to this document.

Q This letter was submitted by Mr. Edelstein to prove that he always required the Doctor --

MR. LAWYER: Your Honor --

MR. APPLEMAN: I am just trying to relate --

THE COURT: I think I will have to sustain an objection as to form. You are making a statement whereas you should ask a question.

Q Does this letter state the amount of sales for the year 1966 at the top of the letter?

A No. At the top? That is not a letter, it is a form.

Q Does it set forth the amount of income labeled sales?

A Yes, it does.

Q I wish to show you Government Exhibit 1 in Evidence. Will you please state if the item listed as sales on Defendant's Exhibit E corresponds to the amount reported on the income tax return?

A Yes, it does.

Q That amount is the Schedule C income reported per the return?

A Yes.

Q Can you please look at Government Exhibit 2 and see if that amount corresponds with the Schedule C income reported on the taxpayer's income tax return for the year 1967?

A Thatiis the gross --

MR. LAWYER: I don't understand the question.

Q In other words, does the amount set forth as sales with regard to 1967 correspond to the amount of gross receipts reported on the Schedule C of the taxpayer's income tax return?

MR. LAWYER: This means comparing Defendant's

Exhibit --

MR. APPLEMAN: Defendant's Exhibit E with Government 2.

A Yes, it does.

Q Comparing Defendant's Exhibit E, reported sales, with Government Exhibit 3 with regard to the 1968 figure stated on Defendant's Exhibit E, does that correspond?

A Yes, it does.

Q Can you please compare the amount stated on Defendant's Exhibit E with Government Exhibit 4 and see if that corresponds with the gross receipts reported?

A Yes, it does.

Q Is there a qualification with regard to the figures as represented by the nomenclature "Sales" underneath the figures; is there a qualification as to those figures?

A Yes, there is.

Q What does that qualification say, sir?

A "Above does not include W-2 or 1099 issued to me."

Q Therefore, in addition to those figures as shown in Defendant's Exhibit E it should be added to the W-2's and 1099's; is that correct, sir?

A I'm not clear on your question.

Q The question is this: According to this statement which was prepared by Mr. Edelstein for Mr. Wolf's signature, it states that in 1966 --

MR. LAWYER: Objection.

THE COURT: Yes, you are now stating the evidence on the record. You may be right, but I can't tell and therefore I have to sustain an objection as to form.

B68 Q The sales set forth in Defedant's Exhibit E for the year 1966, which is $30,116.52, which you have just testified corresponds to the Schedule C as reported on Defendant's 1966 income tax return "does not include W-2's and 1099's issued to me"; is that correct, sir?

A That is correct.

Q Therefore in order to arrive at a proper figure for the income of the taxpayer in the year 1966 it is necessary to add on to this figure shown on Defendant's Exhibit A the W-2's received from the salary of Mt.Sinai and the 1099; is that correct, sir?

MR. LAWYER: Objection to form.

THE COURT: Yes, sustained.

Q What is a Form W-2?

A A Form W-2 shows an indivdual's earnings during a paticular period, either a particular year --

Q In other words, no further record need be kept with regard to that if a W-2 is issued to you; is that correct?

MR. LAWYER: Objection to form.

THE COURT: Yes, sustained.

Q If a taxpayer received a W-2 would that be self-evident as to the amount of money or income he received from the party issuing the W-2?

A Yes, it would.

Q Can you please explain to the jury what is a Form 1099?

A A Form 1099 is issued by an employer or agency or corporation or business that indicates the amount of payments, income payments made to a particular individual. 1099's would be issued, for instance, by corporations that pay dividends to an individual and it would show the amount of dividend income paid to that individual during a particular year.

THE COURT: It is not required for any amounts under $600., is it?

THE WITNESS: It is required for amounts under $600. It is required for amounts over $10., I believe, your Honor.

THE COURT: All right.

Q So, in other words, all moneys received by the Doctor from United Medical Service would require him to receive a 1099, assuming that it was in excess of $10.; is that correct?

A That is so.

Q Assuming that he received in excess of $10. in any year from International Telephone & Telegraph, would that also require him to receive a 1099?

A Yes, it would.

Q Therefore, and we will take this year by year, in 1966 if the taxpayer submitted the fact that he earned $30,116. from income and also submitted his W-2's and 1099's, according to the statement those W-2's and 1099's should have been added to the income as shown on Defendant's Exhibit E; is that correct, sir?

MR. LAWYER: I object to the form of the question.

THE COURT: What is the matter with it, Mr. Lawyer?

MR. LAWYER: Your Honor, he used the words that it "should have been added". That is very broad.

MR. APPLEMAN: I will correct it.

Q If the taxpayer submitted this figure to the accountant as his gross income and also submitted the 1099's and W-2's to the accountant based on this statement, this would require the accountant to add those items to the income as shown on the statement, is that correct?

A I don't know if there was any requirement for anything to be submitted on here.

Q Based on the statement here which says "Above does not include W-2's and 1099 issued to me" -- I think it is very definite. Now, based on that statement there would have to be an addition to the amount of income shown to the figure recorded as sales in 1966, wouldn't there, sir?

A No, those would be --

Q Yes or no, sir?

A No.

Q Why not?

A Because apparently the accountant was only concerned with the amount of gross receipts reported by the taxpayer. The W-2 Forms and the 1099 were self-evident to him as probably being correct and he wasn't questioning them. That is the only assumption I could make.

Q If he wasn't questioning them, why is this placed on a form which was signed by Wolf and made under the accountant's letterhead?

MR. LAWYER: Objection.

THE COURT: Yes, that is just purely argumentative. Sustained.

Q Defendant's Exhibit E, is that an item under the letterhead of Edelstein -- and Cohen is crossed out, CPA --

Is that the letterhead?

A That is correct.

Q It says "This is a form used by Edelstein" --

THE COURT: It is in evidence. He can't tell us any more about it than you can tell or the jury can tell or I can tell.

Q In printing it says "In connection with " --

THE COURT: This is no time to read it. We haven't got into the argument yet.

Q Were there 1099's issued to Dr. Wolf?

MR. LAWYER: Objection.

THE COURT: If he knows I will permit it.

A I believe there is some evidence that 1099's were issued.

MR. LAWYER: Would you like all of the exhibits?

MR. APPLEMAN: Yes, please.

Q I would show you Government Exhibit 70A referring to the amount paid to Dr. Wolf from International Telephone & Telegraph. Will you please state the amount that was paid to Dr. Wolf from Internation Telephone & Telegraph in 1966?

A There were two --

Q Did the payments exceed $10.?

A Yes, they did.

Q Was a 1099 required to be sent to Dr. Wolf?

A Yes.

THE COURT: Wait. A 1099, Mr. Skolnick, is an information return to the Internal Revenue Service, isn't it?

THE WITNESS: That is correct, your Honor.

THE COURT: And simply a copy of it is sent to the taxpayer for his information?

THE WITNESS: That is right.

THE COURT: The requirement is that the information return be made to the Internal Revenue Service.

MR. APPLEMAN: The same requirements that are applicable to a W-2 return is applicable to a 1099. A W-2 is sumitted --

MR. LAWYER: This is not summation. If he wants to take the stand --

THE COURT: All right, let's go on.

Q I show your Government Exhibit 71B, the checks paid to Dr. Wolf from ITT during the year 1968. Does that exceed the required $10.?

A Yes, it does.

Q Was there a requirement that a 1099 be issued to the Doctor and the Internal Revenue Service with regard to those payments in the year 1068?

A Yes.

Q I show you Government Exhibit 72B, ITT checks made payable to Dr. Wolf in the year 1969. Can you please tell me how many checks were involved in Government Exhibit 72B and whether those amounts exceed $10.?

MR. LAWYER: Can we just simply stipulate?

THE COURT: Yes. What is it?

MR. LAWYER: That for all ofthe ITT checks that exceed $10. for the year concerned, when an ITT witness was on the stand we stipulated that 1099's were sent out each year.

B69 THE COURT: All right.

Q During the course of your investigation did you determine if any other payors were required to file form 1099's to Dr. Wolf?

A Yes, to some extent.

Q Who would they be?

A Well, the banks, the savings banks, brokerage house issued payments to him, dividend payments.

Q Let's refer to professional fees. Just let's stick to professional fees.

A No, I did not.

Q Would United Medical Service have been required to file a form 1099?

A Yes.

Q Would the Medicare subdivision of United Medical Service have been required to file a Form 1099 with regard to payments made to Dr. Wolf?

A Yes.

MR. APPLEMAN: May I please have Government Exhibits 6 thru 66?

MR. LAWYER: Yes.

Q I show you Government Exhibit 62 for Identification. Can you please relate the total amounts shown as applicable to Dr. Wolf each year?

MR. LAWYER: I object. The document is not in evidence. It is past recollection recorded.

THE COURT: All right.

MR. LAWYER: I have no objection to the document going in evidence at all.

THE COURT: Do you want to offer it?

MR. APPLEMAN: Yes.

THE COURT: Mark it. It will be received without objection as a defendant's exhibit.

xx [Defendant's Exhibit K received in Evidence]

THE COURT: Do you want to read it to the jury?

MR. APPLEMAN: Yes.

THE COURT: You may.

[Mr. Appleman read from Defendant's Exhibit K]

Q Based on those totals would there have been a requirement that a 1099 be issued to the Doctor?

A I would like to, if I may, look at the document you are quoting from because you showed it to me briefly and I think you were reading totals paid to both the patients and the Doctor which --

Q There is no differentiation made with regard to that on the books of the company.

THE COURT: This is no time to argue it. The document is in evidence. I take it you read it correctly.

MR. APPLEMAN: Right.

THE COURT: Let's go on.

MR. LAWYER: May I point out it was stipulated in evidence that the 1099 issued.

MR. APPLEMAN: So there were 1099's issued.

THE COURT: Let's go on, please.

Q Did the taxpayer receive any other funds from companies which would be required to issue 1099's?

A There may have been one or two small amounts.

Q Which companies; do you recall?

A I don't recall.

Q Did the Doctor receive any checks besides payroll from Mt.Sinai Hospital?

THE COURT: How would this man know that?

MR. APPLEMAN: Because on his work papers there is a definite item or items made with regard to the fact that checks were made payable to the Doctor.

THE COURT: You can ask him about his work papers, yes, but to ask him what checks Dr. Wolf received, he wouldn't have the slightest testimonial knowledge.

MR. APPLEMAN: I would like Government Exhibit 529, the deposit to Barclays Bank of New York.

Q I show you Government Exhibit 529 in Evidence. I believe these schedules were made under your direction or by you, sir; is that correct?

A That is correct.

Q On page 3 is an item received from Mt.Sinai Hospital which is not placed into professional income either identified or unidentified?

A That is correct.

Q Will you please state the amount of that item?

A $297.60.

Q What was that item for, sir?

A I didn't hear the question.

Q What was that item for, sir?

A Mt.Sinai Hospital travel expense.

Q Did you request further information regarding that payment from Mt.Sinai?

A No. That particular payment was used to reduce the deposits by that amount.

Q Reduce the deposits by that amount? Will you please show me how it was reduced?

A Because it was not from his part of his income, his gross receipts.

Q If somebody receives the travel expense from an employer, is that required to be included in his gross receipts?

MR. LAWYER: Objection.

THE COURT: I will permit it if he can answer.

A Inasmuch as he evidently included it in his expenses when his return we prepared --

Q Please answer the question. Does someone receiving expense moneys from an employer have to report such expense funds received as income?

A Yes. I would have to qualify that by saying yes, if it is taken as a deduction in that amount it should be included in income.

Q Do you know for a fact that that amount was claimed as a deduction by Dr. Wolf?

A No, I don't.

Q Do you travel for the United States Government?

A Sometimes I do, yes.

Q Do you receive expense funds from the United States Government with regard to your travel?

A Yes, I do.

Q Do you include that in your income, sir?

A No, I don't.

Q Why don't you include it in your income, sir?

THE COURT: Really, do we have to go into all this?

MR. APPLEMAN: Yes.

THE COURT: This man is not here to tell the jury what the law is. I will tell the jury what the law is. Let's go on. Ask a question. I won't permit any more on this line.

Q There is an item on the same page included as identified income. I refer to the item $423.09 from G.S. Searles & Company, which is a large drug company in Skokie, Illinois. Did you contact Searles with regard to that payment?

A I know contact had been made to Searles to get information on payments to Dr. Wolf.

Q Was there any response received from Searles?

A Yes, there was.

Q What did Searles state with regard to that payment?

A I would have to see the exhibit pertaining to that to answer your question, if I may refresh my recollection.

Q What exhibit are you referring to? Your exhibit in your report is 146. I don't know what the Government exhibit is.

MR. LAWYER: It is not an exhibit in evidence. It is only a letter.

THE COURT: Do you have it?

MR. LAWYER: I could produce that over the luncheon period, your Honor. Just a letter.

THE COURT: Let's go on.

Q Were there any other funds received by the Doctor from Searles?

A I would have to refresh my recollection by looking at the correspondence.

Q With regard to the $297.60 payment from Mt.Sinai Hospital, was there a travel voucher submitted to the hospital by Dr. Wolf for this payment?

MR.LAWYER: Objection.

THE COURT: Sustained.

Q I show you Government Exhibit 12A in Evidence. Do you know what that is, sir?

A It is part of the work papers of Mr. Edelstein.

Q What are the gross deposits listed on that work sheet?

A There are different figures on two pages and I cannot answer the question unless they were added up.

Q Get the third page. You will find it added up on the third page.

A The last figure under deposits is shown as $50,872.61.

B70 Q Is there anything on these work sheets of Mr. Edelstein to indicate a deduction with regard to these gross deposits shown and prepared under the supervision of Dr. Wolf?

A No.

Q Therefore, according to this work sheet deposits exceeded $51,000. and the 1967 return only shows Schedule C income of $29,212. without any explanation on these work papers; is that correct, sir?

A Yes.

Q Can we go to the next to the last page with regard to expenses. When you examined these work papers did you notice that there was under charitable contributions an items called Columbia Grammar School?

A I did not examine the expenses. The Revenue agent performed that function.

Q Wouldn't it have been appropriate to examine all the work papers with regard to the preparation of the taxpayer's 1967 return?

A Not necessarily.

THE COURT: Suppose we stop here for lunch. Mr. Foreman, ladies and gentlemen of the jury, we will stop and have lunch now and resume at 2:00 o'clock. Thank you very much. You may retire.

[The jury left the courtroom]

THE COURT: Mr. Lawyer, do you think you could get that letter during the luncheon recess?

MR. LAWYER: I will try, your Honor. I am sure I have it. It is just a matter of locating it.

THE COURT: All right, we will meet at 2:00 o'clock. Thank you.

[Luncheon recess until 2:00 p.m.]

AFTEROON SESSION

[2:00 p.m.]

THE COURT: Did we get the letter from Searles?

MR. LAWYER: Yes, sir.

MR. APPLEMAN: Yes, your Honor. I don't know that we need to take it up now, but I have grave doubt about this $610. thing. I think Mr. Skolnick must be terribly mistaken.

MR. LAWYER: My understanding originally, your Honor, was --

THE COURT: I have tried these daily double cases. Do you remember those?

MR. APPLEMAN: Yes.

THE COURT: The people who go to race tracks and if they win more than $600. they have ticket cashers who turn in their tickets because the track has to report everybody above $600.

MR. LAWYER: That was my original thought, but as Mr. Skolnick was testifying it occurred to me maybe my original understanding was wrong. It would seem that suppose, for example, one person had income in excess of $600. but he had maybe six hundred 1099's or in excess of that, each one for more than one dollar. Then he might have several thousand dollars and all that the Government would know would be that a 1099 was filed.

THE COURT: Maybe we don't have to resolve it now but I have grave doubt whether --

MR. LAWYER: I think the case will go until Friday at least so we can determine that and perhaps clear it up.

MR. APPLEMAN: It is my understanding with regard to the race track -- I wish I won a few -- that there was a special Act where the onus was placed upon the race track that if any payment were made over $600. for a $2. bet a 1099 would have to be filed. So, in other words, assuming I had a horse that was running and I put $30. on the horse but for $2. it didn't pay $600. but paid an amount less than $200. but I received in excess of $600. no 1099 is required. In other words, a 1099 is required -- I am not referring to anything else but the race track -- At the race track a 1099 is only required when a $2. bet would obtain or when an amount in excess of $200. or more.

MR. LAWYER: What is your understanding as to what Mr. Skolnick is saying; is he correct or do you not know?

MR. APPLEMAN: To be specifically honest I didn't even look it up. I didn't even look it up. I was trying to get a little organization. I even had to type up that motion so because of that I was not that organized and I felt that I should try to organize it this afternoon.

THE COURT: We don't need to solve it now. But I have had several criminal cases in which I have charged juries on 1099's which I can dig out.

MR. LAWYER: I might point out that Mr. Appleman is an accountant as well as a former special agent.

MR. APPLEMAN: My understanding is that banks and corporations paying interest and dividends in excess of $10. must file a Form 1099. All other payments in excess of $600.

If it is against my interest I don't want to say anything. I refuse to make an admission against interest in front of the jury anyway.

[Jury present]

MORRIS SKOLNICK, resumed:

CROSS-EXAMINATION [CONTINUED]

BY MR. APPLEMAN:

Q Sir, I show you Government Exhibit 103 in Evidence which are payments made to Dr. Wolf from the Royal Globe Insurance Company. Do those payments to Dr. Wolf exceed $600.?

A Yes.

Q During your investigation did you determine whether or not a Form 1099 was filed?

A No.

Q I wish to show you Government Exhibit 535 in Evidence. Can you please state if any corporate checks are listed thereon which were paid to Dr. Wolf?

A There is a corporate check for $115. from Sperry & Hutchison Company, Region Account, Metuchen, New Jersey.

Q Are there any other checks from corporations or life insurance companies?

A There is a check which is dated July 31, 1969 for $5. It is a corporate check from Beneficial National Life Insurance Company.

Q $5.?

A $5.

Here is another check dated August 5, 1969 for $10., a corporate check from Beneficial National Life Insurance Company.

Here is another check dated August 15, 1969 for $190., a corporate check from International Telephone & Telegraph Company.

Those are the only corporate checks with the exception of one from Abraham & Straus for $4.24 which was a refund on a purchase.

Q Disregarding the A&S check, did you make any inquiries as to whether 1099's were prepared by these other companies for Dr. Wolf?

A No.

Q Sir, can we please return now to my former question as to the year 1969 pertaining to the work sheet for which I will need 12A and also Exhibit 2.

I show you Government Exhibit 12A in Evidence. To refresh the jury's and the Court's recollection, is that the work sheet prepared by Mr. Edelstein with regard to the preparation of the defendant's 1967 return?

MR. LAWYER: Objection.

THE COURT: I will permit it. I agree it is not really correct in form.

A Yes.

Q That work sheet indicates check deposits of $51,500. -- We'll even it out -- Is that correct?

A Correct.

B71 Q Taking the figure $51,500., adding thereon the 1099's from Blue Shield, which in 1967 amounted to $18,000., the ITT 1099's, which I don't have for 1967, and any other Form 1099's which possibly could have been obtained by Dr. Wolf, would those two figures, the $51,000. and the $18,000. exceed the amount of those deposits that you have on your schedule for 1967?

MR. LAWYER: Objection.

THE COURT: Sustained.

MR. APPLEMAN: Pardon me, sir?

THE COURT: Sustained.

Q I show you Government Exhibit 7 in Evidence for the year 1967. What is your total deposits for that year in accordance with Government Exhibit 7?

A $51,000. -- That is just all the bank accounts.

Q Yes. Total deposits.

A $65,346.25.

Q Government Exhibit 12A lists deposits of $51,500. and also indicates on page 1 that receipts include United Medical Service receipts of $4,563. Could you look at page 1, please, of Exhibit 12A?

I notice there is a note in front of that page which says receipts include United Medical Service $4,563.91.

A Yes.

Q So when one takes the $51,500. shown as gross deposits, deducting therefrom the $4,500. and adding thereon the 1099's which we know were received from Blue Shield totaling $18,000., would that amount exceed your total deposits as reflected on Government Exhibit 7?

MR. LAWYER: Objection.

THE COURT: Yes, sustained. It is perfectly proper and normal argument that can be made to the jury, but there is nothing that this witness can add to the situation. You are just asking him from documents that are in evidence what are essentially argumentative questions.

All right.

Q In your meetings with Mr. Edelstein did he relate as to why there were no work sheet figures for the income reflected on the 1966 return?

A He just indicated to me he didn't know what happened to it. He at one time had it but it was not available, couldn't find it.

Q I wish to call your attention to Mr.Edelstein's testimony before the grand jury on April 13, 1973, SA-1.

MR. LAWYER: Objection, your Honor. First of all, it is not in evidence. Secondly, it has nothing to do with this witness.

THE COURT: I will permit it. I don't know what it has to do with this witness.

Q The question posed:

"Where did you get the gross receipts for Schedule C for 1966; can you tell us that?

"A The information he gave me he submitted to me verbally."

THE COURT: What is the question to this witness?

Q The question to this witness: Were you aware of the fact that Mr. Edelstein stated to you that he had these figures on the work sheets and subsequently testified to the fact that these figures wre submitted verbally?

MR. LAWYER: Objection.

THE COURT: I will permit it.

A No, he didn't make that statement.

Q You weren't aware of his grand jury testimony?

A No.

Q I wish to show you Defendant's Exhibit A in Evidence which indicates that Mr. Edelstein requested stock transactions, bank deposits, savings bank deposits, summary of disbursements from the taxpayer. If the taxpayer had given all these items to Mr. Edelstein could he have correctly determined the gross income of the taxpayer?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q Mr. Skolnick, when, if ever, did you ever advise the taxpayer of his constitutional rights?

A I never met the taxpayer during the investigation.

Q Did you ever advise the taxpayer's representative, Mr. Edelstein, of his constitutional rights?

MR. LAWYER: I am sorry. Of whose constitutional rights?

MR. APPLEMAN: I am just saying of anybody's constitutional rights.

Q Did you ever submit to Mr. Edelstein the format that a special agent must go thru to advise a taxpayer or other person being interviewed of his constitutional rights?

MR. LAWYER: I object to the form.

THE COURT: Yes, sustained as to form. That required business involves a conclusion of law that may be right, but I can't pass upon it.

Q In the course of your investigation are there any requirements placed upon you by the Internal Revenue Service?

MR. LAWYER: Objection.

THE COURT: Yes, sustained.

MR. LAWYER: May I ask or may I suggest that the question be: Did he advise Mr. Edelstein or Mr. Wolf of either's constitutional rights?

THE COURT: I have sustained the objection.

Q Did you advise either Dr. Wolf or Mr. Edelstein of his constitutional rights?

THE COURT: Mr. Skolnick, you never met Dr. Wolf.

THE WITNESS: I never did.

THE COURT: You never talked to him?

THE WITNESS: Until this year when I delivered a subpoena to him.

THE COURT: So let's stick to Mr. Edelstein.

Q Did you advise Mr. Edelstein of his constitutional rights?

A No, Mr. Edelstein wasn't under investigation.

Q Do you recall an interview with Mr. Edelstein in which you advised Mr. Edelstein to tell someone on the other end of the line that the special agents were present? In other words, did there ever come a point in time in your discussions with Mr. Edelstein that a telephone call was received and you advised Mr. Edelstein to please tell the caller on the other side that the special agents were present?

A I know at a conference at Mr. Edelstein's office -- I don't remember the exact date, but I could refer to it -- I don't know if I advised Mr. Edelstein to tell the Doctor that the special agents were present, but I overheard Mr. Edelstein tell the Doctor that special agents from the Intelligence Division were in his office.

Q Do you have that memorandum of conference?

A I don't have it with me, but I do have a memorandum of that conference.

Q I wish to show you a copy of a memorandum of interview. Will you pease read this and refresh your recollection as to what occurred on that date?

THE COURT: Do you have the answer, Mr. Skolnick?

A Yes, this was an earlier meeting than I was referring to and according to my memorandum there was a full discussion of the taxpayer's constitutional rights and, if I may, I could read the whole contents here.

Q You did advise Mr. Edelstein of his constitutional rights?

A Yes, we had a full discussion of it.

MR. LAWYER: He didn't say that.

THE COURT: Yes.

Advised him of the taxpayer's constitutional rights; isn't that what it says?

THE WITNESS: That is correct, your Honor.

Q In other words, you advised Mr. Edelstein of the taxpayer's constitutional rights?

A Yes, and he said there was nothing for the taxpayer to worry about.

Q Was there anything for him to worry about?

MR. LAWYER: Objection.

THE COURT: Sustained.

Q You testified as to a conversation that Mr. Edelstein had over the phone with someone in this

Miranda interview and you heard him call that someone, whoever he may be, Dr. Wolf; is that correct?

A That is correct.

B72 Q Do you know for a fact that he spoke to Dr. Wolf on that date?

A He said he did.

Q Do you know for a fact that he spoke to Dr. Wolf on that date? Do you know what he knows? Do you know?

A No.

Q He could have spoken to his associate rather than Dr. Wolf; is that right?

MR. LAWYER: Objection. The direct --

THE COURT: Please read the question.

[Question read]

THE COURT: I will sustain the objection. Of course he could have. He says he doesn't know to whom he spoke.

Q Mr. Edelstein made many representations to you during the course of your investigation. Did you ever request that a signed statement be submitted from the taxpayer with regard to the veracity of these statements?

MR. LAWYER: Objection.

THE COURT: I will permit it.

A No.

Q You never requested --

THE COURT: He just said no. Let's don't repeat it.

MR. APPLEMAN: I am sorry.

Q Is it a usual operating procedure of the Intelligence Division of the Internal Revenue Service to obtain signed statements of representations made by a taxpayer?

MR. LAWYER: Objection.

THE COURT: I will permit it.

MR. LAWYER: May I have a bench conference?

THE COURT: All right.

[At the bench]

MR. LAWYER: The defendant came into the grand jury and took the Fifth Amendment on the questions asked him and also refused to come down for interviews. I think it is unfair. We cannot point out that he took the Fifth Amendment or that he declined to come down for conferences. In fact, he made appointments for conferences and did not keep them. I think it is an unfair implication that the agent was derelict in not talking to the defendant.

THE COURT: Mr. Lawyer, can't questions be asked as to whether this agent asked for any statement of Dr.Wolf?

MR. LAWYER: He didn't ask him that.

THE COURT: I thought that was the question.

MR. LAWYER: He asked him whether it was the usual procedure.

THE COURT: If that is it, the usual procedure, I will sustain your objection. If it is what he did in this particular situation I will overrule it.

[In open court]

THE COURT: Do you want to put another question?

MR. APPLEMAN: Yes, your Honor.

Q In Mr. Edelstein's work papers for the year 1968, Government Exhibit 13A in Evidence, will you please state the total deposits reflected on the work sheets?

A $39,510.66.

THE COURT: Mr. Skolnick, do I understand these are the work sheets that were given to Mr. Edelstein?

MR. APPLEMAN: That is correct, your Honor.

THE COURT: Do these work sheets list deposits?

MR. APPLEMAN: Yes, your Honor.

THE WITNESS: It lists the daily deposits.

THE COURT: Daily deposits?

THE WITNESS: Yes.

MR. APPLEMAN: It has a list of deposits with the totals on all the years, your Honor, except for 1965.

THE COURT: All right.

Q In 1968 the total was $39,510.

THE COURT: Next question.

Q Defendant's Exhibit K indicates that Blue Shield in 1968 paid to or on behalf of the Doctor over $20,000. which should have been reported on a Form 1099. Are there any other companies to your knowledge for which a 1099 should have been issued to Dr. Wolf in the year 1968?

A If he had performed services, professional services for International Telephone & Telegraph, they should have submitted one 1099 for him.

Q Did he receive any money in 1968 from the Royal Globe Insurance Company?

A I would not recall that unless I checked all the analyses, all the records.

Q I show you Exhibit 526 in evidence.

THE COURT: All right, what is the question.

A I can't --

Q It consists of ten pages and this is page 7 thereof. Was there a payment received from the Department of Social Services, City of New York?

A Yes, there is one payment.

Q Would there have been a 1099 issued for that payment?

A I don't know whether there would have one issued.

Q Should there have been one issued?

A One should have been issued.

Q With regard to 1968, and I am referring now to Exhibit 526, do you recall when Judge Wyatt was asking you about the deposits which were reflected in your report and you stated that you include therein all items which would be reflective of an income nature and that you excluded all unusual items; do you recall that? In other words, in your explanation of what the bank deposits method was to his Honor you stated that you excluded all unusual items.

MR. LAWYER: Objection.

THE COURT: I have to sustain the objection as to form. You may be right, Mr. Appleman, but I just can't remember what his answer was.

Q For the year 1968 are there any unusual deposits which you have included in income?

MR. LAWYER: I object to the word "unusual".

THE COURT: If the witness can answer it I will permit it.

A If I may look thru these sheets --

THE COURT: Of course.

A In deposits in the Chemical Bank checking account I found only one large deposit that was included in the professional income, that on July 8, 1968 in the amount of $1,305. However, that is the only one I would say that say --

Q Do you have Government Exhibit 528? Can you please state if there are any deposits which would appear to be out of the ordinary?

MR. LAWYER: I am going to object again. I am at a disadvantage. I don't know what "unusual" means.

THE COURT: Out of the ordinary. He has already answered it. I think I will sustain the objection. He said that there is one that is large, but the document is in evidence. You can argue to the jury fully.

Q In the year 1968 was there a cash deposit made of $41,275.?

A In the Chemical Bank?

Q No, in the Barclays Bank.

A In the Barclays Bank there was a large cash deposit made on December 16.

THE COURT: What year?

THE WITNESS: 1968.

Q Was that $41,275.?

A That is correct.

Q Did you include that in income, sir?

A Yes, I did.

Q Did you attempt to ascertain whether the taxpayer was a beneficiary of an estate or gifts during these years?

A I explored every avenue to try to locate any items that were deposited which did not come from an income source.

Q During your explorations did you determine whether the taxpayer's father was alive or dead?

A Yes.

Q Is he living?

A He died.

Q When did he die?

A In the latter part of 1966.

Q What was the taxpayer's father's occupation?

MR. LAWYER: I object to this.

THE COURT: It is possible it may have something to do with the lead that was explored. I can't tell. I will permit it.

A I believe he was a medical man, a doctor.

Q Was an estate tax return filed with regard to his estate?

A Yes, there was.

Q What did that estate tax return for the estate of Arthur D. Wolf reveal?

MR. LAWYER: Objection. If he has the paper --

THE COURT: Yes, I think I will sustain the objection.

Did Mr. Edelstein ever suggest to you that any of the defendant's deposits came from his father's estate?

THE WITNESS: No, your Honor. He --

THE COURT: Let's go on.

B73 MR. APPLEMAN: Does he know? Did he say "No" or "Don't know"?

THE COURT: He said "No", as I understand it. Is that it?

THE WITNESS: That is correct.

MR. APPLEMAN: May I approach the bench, please?

THE COURT: Yes.

[At the side bar]

MR. APPLEMAN: It is my understanding the the Court of Appeals in that Circuit in the case of Lensky has extended the doctrine with regard to leads that an agent has to follow. He has to follow not only the lead given by the taxpayer but also the leads that he derived from his investigation.

MR. LAWYER: I would suggest that it doesn't matter. First of all, this Circuit has never held leads applicable to a bank deposits case in the first place. Even if it were, he has laid no foundation for it.

MR. APPLEMAN: I believe I may have a copy of the will. It will show that none of it was willed to the son. Indeed, it was all willed to the mother. I also will show that the man had a sizeable estate and could have given large gifts to his son.

THE COURT: "Could have." Unless Edelstein and/or the defendant gave the Government some lead to the father's estate I will continue to sustain the objection.

[In open court]

MR. APPLEMAN: Based on your Honor's ruling, I won't pursue this any further.

THE COURT: You can ask him anything about what Edelstein or the defendant thru Edelstein or otherwise may have told him about the father's estate.

MR. APPLEMAN: Itrwas my understanding that in his explanation to you he specifically stated he attempted to trace out all possible nontaxable sources. This is the reason why I am trying to inject this item.

THE COURT: In constructing this unreported professional income of Dr. Wolf, Government Exhibit 7, in doing that did you try to find out whether he could have gotten anything from his father's estate?

THE WITNESS: Yes, I did, your Honor.

THE COURT: All right. Well, you can ask him about what he did.

Q Did you interview anyone with regard to any possible receipts that the taxpayer could have received from his father?

MR. LAWYER: Objection. That is a different question.

THE COURT: No, I will permit that.

A No.

Q Did you consider his father's estate sizeable?

THE COURT: No, I won't permit that.

Q Did you obtain the activity record with regard to the case file in this case?

A Yes.

Q During the lunch hour?

A Yes.

Q Will you please relate as to when this case originated in the Intelligence Division?

A The first entry in the chronological data sheet, activity sheet, shows that on February 11, 1970 Anthony Mirti was assigned to the investigation. The case was transferred from him to Special Agent Ralph Larson on May 13, 1970, and it was reassigned to me on June 16, 1970.

Q Did either Special Agent Mirti or Special Agent Larson take any steps with regard to this investigation?

MR. LAWYER: Objection.

Q Does the activity record reveal any steps taken by Special Agent Mirti or Special Agent Larson?

THE COURT: I will permit it. Overruled.

A Yes, it does.

Q What does it reveal with regard to Special Agent Mirti?

A If I may consult the records to check it -- It shows that Special Agent Mirti had made a check of Intelligence Division files as to any prior activity on the part of the taxpayer. He also made various inquiries of banks as to financial information on Dr. Wolf. Other sundry activities --

Q And in that sundry activities, was there any comment made with regard to contacting the Revenue agents?

A No, there is no activity at all indicating that he had contact with any Revenue agent on this case.

Q When was the Revenue agent first contacted with regard to this case?

A Referring again to the chronological work sheet, under date of June 23, 1970 a Revenue agent was contacted on this matter.

Q Which Revenue agent?

A Revenue Agent William P. McGuire.

Q There was no prior contact with Revenue Agent McGuire according to the activity record?

Q No, not according to the activity record.

Q I place before you Government Exhibit 14A in Evidence which is the work sheet of Mr. Edelstein for the year 1969. Will you state the gross amount of deposits referred to on that work sheet?

A Attached to this work sheet is a prescription slip with "Robert Lawrence Wolf, M.D." on top of it and in handwriting it says "Total income $37,401.05."

Q And underneath it?

A "Total bank deposits, $41,706.54", and it says "Bank deposits exceed income because bank deposits reflect sale of stocks and other mostly non-related to business."

Q Is this notation written on a prescription form of Dr. Wolf and is there any date on this form that I just read these figures from?

A There is someting scribbled on the top of it. I don't decipher it.

Q What does it look like?

A It may be a date, but I can't make it out.

Q What does it look like?

A I don't know. I can't decipher it.

Q How can you state that it looks like a date?

A I didn't say --

THE COURT: Is the document in evidence?

MR. APPLEMAN: Yes, it is.

THE COURT: It can be shown to the jury. You can argue what it means.

Q I wish to draw your attention to the second page after the page having the prescription form of Dr. Wolf with the notation on it. There is an item there called "Charitable contributions", and underneath it is "Columbia G.S."

During the course of your investigation did you make any determination as to what "Columbia G.S." reflects?

A No.

Q Did you attempt to check any of the claimed deductions reflected on the work sheets with the income tax returns as filed?

A I did not do it.

THE COURT: Mr. Skolnick, in your calculations haven't you given the Doctor full credit for all of his deductions?

THE WITNESS: Yes, I did, your Honor.

THE COURT: Is that why you didn't investigate?

THE WITNESS: That is correct, your Honor.

THE COURT: All right.

Q I show you Government Exhibit 553 in Evidence. Is this reflected anywhere on Government Exhibit 7?

A Yes, it is.

Q In your computation of the figure transferred from Government Exhibit 553 to Exhibit No.7, did you consider any of the official checks issued by Chemical Bank to be a cash item?

A Yes, I did.

Q What was your basis for so doing?

A My basis was that the --

MR. LAWYER: Your Honor, I don't think 553 is in evidence. If it isn't, I will stipulate it in if Mr. Appleman wants it, but I don't think it is.

B74

THE COURT: I had assumed that it was.

MR. LAWYER: It is not marked in evidence.

THE COURT: Do you want to offer it?

MR. APPELMAN: Yes.

THE COURT: Give it the next defendant's exhibit number and we'll receive it in evidence.

(Defendant's Exhibit L. received in evidence.)

[continued on next page]

B74 [cont'd]

A My basis was that according to the bank official the checks, the official checks and the personal money orders that were issued to the order of Goodbody & Company for Dr. Wolf was paid for in currency for the reason that there was no notations on the checks indicating that it came from any bank accounts.

I also checked all of Dr. Wolf's known bank accounts and I could find no funds coming from those accounts which could have been used for the purchase of these checks.

Q Could there have been any unknown bank accounts closed out in the bank of which you had no knowledge?

A Could have been.

THE COURT: But, Mr. Skolnick, these checks purchased by currency, as you have just told us, do they appear as part of the bank deposits or not?

THE WITNESS: No, that is added to the deposits. Those are expenditures, cash expenditures. That is the only instance where that was done.

THE COURT: Where does that show up on Government Exhibit 7?

THE WITNESS: It shows up, your Honor, toward -- under professional income deposited. Under that it says, the fourth item down, "Add professional income received deposited in brokerage account".

THE COURT: Yes.

THE WITNESS: May I point it out to your Honor?

THE COURT: Yes, because I don't see it.

I see.

THE WITNESS: "Add professional income received deposited in brokerage account", the $8,564.07 and the $681.70 figures.

THE COURT: I understand.

THE WITNESS: That is correct.

Q Mr. Burke of Chemical Bank testified to the effect that all additional checks would not be obtained by a direct purchase; that these would normally come from bank account transfers. Are you aware of that, sir?

MR. LAWYER: Objection.

THE COURT: Sustained. You may be right, but whenever you state testimony you invite an objection. I'm sorry. You may be perfectly right.

MR. APPLEMAN: I remember you going over it, your Honor, with him specifically.

Q I show you Government Exhibit 533 in Evidence. Does this reflect payment made to Dr. Wolf from Aetna Life Insurance Company for $15.?

A Yes, it does.

Q Were any other payments made by Aetna to Dr.Wolf?

MR. LAWYER: When.

Q In the year 1966 to 1969.

A I don't know.

Q Did you contact Aetna Life Insurance Company?

A No, I did not.

Q Therefore, if there were substantial payments made to Dr. Wolf from Aetna a 1099 would be forthcoming?

A That would be true.

Q But you thought it was unnecessary to contact Aetna?

A Yes. I may have found additional income if I had.

Q Why didn't you attempt to contact Aetna?

A I was satisfied with the amount of income, unreported income, that was disclosed by an investigation.

Q Here is my copy of 535. Is there any corporate payment of $115. made to Dr. Wolf from Sperry Hutchison Company?

A Yes, there is.

Q Did you contact Sperry Hutchison Company?

A No, I did not.

Q If it would have been payments made for Sperry Hutchison to Dr. Wolf would a 1099 have been forthcoming from Sperry Hutchison to Dr. Wolf?

A Yes.

Q And Exhibit 535 does reflect a payment from Beneficial National Life Insurance Company to Dr. Wolf?

A Yes, it does.

Q If there were additional payments made by this company to Dr. Wolf would a 1099 have been issued to Dr.Wolf? It is only for $5. I say, if there are any additional payments.

A These are payments on a medical account. It is altogether possible that the insurance companies do not keep a going record of doctors to whom they make payments. They may make a thousand payments to him but they would only know that there is a $5. or $10. -- You would have to identify the particular one.

Q Are insurance companies exempt from the requirement to file Form 1099's for payments made to independent contractors and individuals?

A I don't know the answer to that.

Q So therefore your statement that you made is not one of fact but it is one of possibilities which you know nothing about?

MR. LAWYER: Objection. He keeps asking questions that he couldn't know anything about and then he argues about it.

THE COURT: Sustained.

Q Mr. Skolnick, in the course of your investigation of Dr. Wolf, was there any determination made as to whether the Doctor lectured or not? In other words, during this period of time, 1966 to 1969, did the Doctor travel and give lectures?

A I don't know whether he traveled. I know there was information indicating that he gave lectures.

Q Would the item shown on Government Exhibit 529 pertaining to $297.60 received as a travel expense from Mt.Sinai Hospital be for the travel expenses incurred for one of those lectures?

MR. LAWYER: I object to the form of that question.

THE COURT: I don't know that it is objectionable as to form.

MR. LAWYER: Based on his prior answer I don't see how the witness can properly answer.

THE COURT: I will sustain the objection.

Q I wish to show you a photocopy of a request for check funds made out to Mt.Sinai Hospital dated October 4, 1966.

MR. APPLEMAN: Please mark this as Defendant's Exhibit M for identification.

xx [Defendant's Exhibit M marked for Identification]

Q Did you ever see any requests such as that with regard to payments made by Mt.Sinai to Dr. Wolf?

MR. LAWYER: Objection, your Honor.

THE COURT: Mr. Reporter, would you read the question?

[Question read]

THE COURT: I will permit it. Overruled.

A It is very difficult for me to read this particular photocopy and I don't recall at this point whether I had seen anything like this. I had seen a good many documents at Mt.Sinai and I don't know if this was included in those documents.

Q If you had seen any of these travel requests requesting payment to Dr. Wolf for travel funds would you have requested the check showing payment therefor?

MR. LAWYER: I object.

THE COURT: Sustained.

Q Did you ever see any travel vouchers requested by Dr. Wolf from Mt.Sinai Hospital?

A I don't truly recall. As I said, I had seen so many documents there that I don't offhand remember.

Q It is possible that you had seen a travel request or travel requests made by Dr. Wolf requesting payment for travel funds from Mt.Sinai Hospital?

A It is altogether possible I may have seen one.

B75

Q Could you have seen more than one?

A I have no recollection at this point.

Q In other words, you may have seen many or you may have seen one?

A There were thousands of things I saw during this investigation over a two and a half year period. I can't honestly say each and every item that I saw.

Q If travel funds based on the type of voucher that you just saw were advanced to Dr. Wolf, would they have been includible in his gross income?

A A determination would have been made as to the treatment of it. I --

Q I'm asking --

THE COURT: Let him finish.

Go ahead, Mr. Skolnick.

A In the first place, all payments that were made to Dr. Wolf whether it be payroll payments or any other payments were requested from the Mt.Sinai Hospital and I did my best to obtain all information and if anything was nontaxable or of an untaxable nature I would have excluded it in my computation.

Q I wish to show you a photocopy of a remittance advice numbered 235081 from G.D. Searles & Company with a check made payable to Dr. Robert L. Wolf.

MR. APPLEMAN: Please mark this as Defendant's Exhibit N for identification.

xx [Defendant's Exhibit N marked for Identification]

Q Is that a request for travel funds from Searles?

MR. LAWYER: I object to the form.

Q What is the document?

A It is captioned "Remittance Advice", and it says travel advance Basle, Switzerland.

MR. LAWYER: I object. We have this continuous train of copies of documents that this witness has never seen.

THE COURT: Is this a document in evidence?

MR. LAWYER: No, sir, the last one was not either.

MR. APPLEMAN: Offered simply for identification.

THE COURT: Do you want to offer it?

MR. APPLEMAN: Yes.

THE COURT: Has it been identified? What is it?

MR. APPLEMAN: This is a request for travel funds from Dr. Wolf to Searles for travel to Basle, Switzerland.

THE COURT: Does it come from his files, Mr. Appleman?

MR. APPLEMAN: No.

THE COURT: How can he identify it? How can you lay a foundation thru him?

Q Mr. Skolnick, did you receive any records from the taxpayer or his representative after he was advised of his constitutional rights?

THE COURT: After who was?

Q After Edelstein was advised of the taxpayer's constitutional rights.

A I can't answer it unless I check thru all my records in the sequence of the meetings that I had with Mr. Edelstein.

THE COURT: All right. Suppose you do that at the recess and we will take an afternoon recess now.

Mr. Foreman, ladies and gentlemen of the jury, suppose you retire and we will take a break.

[The jury left the courtroom]

[Recess]

MR. APPLEMAN: I would like, rather than keep looking at these documents and going forth with the special agent, pursue one source and then hopefully finish early and then Friday finish with the special agent in an hour. I think that would be advantageous to the Court and myself and admittedly it is my own fault because of this morning's hurry-up thing I had to do. This is the reason for my request.

THE COURT: What, specifically, are you asking for?

MR. APPLEMAN: What I am asking for is after I finish asking the special agent pertaining to the Swiss account, if we could possibly leave early today and then continue with the special agent at the most an hour on Friday, I will have my work done at that time.

THE COURT: What about the direct examination of the last witness? Why don't we do that this afternoon? Then we may be able to have cross-examination of both of them on Friday.

MR. LAWYER: I really don't choose to do that, but if the Court orders me to do it I will.

MR. APPLEMAN: I don't think it will take much time on cross-examination.

MR. LAWYER: I gave the special agent's report befor he took the stand, so that has been at least five days.

MR. APPLEMAN: On Monday morning I was prepared to go forth in a normal fashion and I had everything laid out the way I wanted it until the difficulty occurred and then this morning my whole operating procedure with regard to preparing for today was -- Just actually reviewing the information could not be done due to the fact that I had to have a motion prepared for the Court of Appeals.

THE COURT: Suppose we do stop early today and then we meet Friday morning. What do you visualize Friday morning?

MR. APPLEMAN: The most is one hour with the special agent.

THE COURT: Mr. Skolnick?

MR. APPLEMAN: That is right.

THE COURT: Then, Mr. Lawyer, you have a ten minute witness?

MR. LAWYER: Yes, just on the tax, a ten or fifteen minute witness.

MR. APPLEMAN: My cross-examination should be practically nil. Then what I would have would be the defense witnesses pepared at that time to go forward.

THE COURT: On Friday morning?

MR. APPLEMAN: That is correct.

THE COURT: Do you think we can finish Friday with them?

MR. APPLEMAN: It is all according to whether the Doctor chooses to take the stand or not. If the Doctor does not take the stand I would say definitely yes. If he does, then it is another situation.

THE COURT: Of course. Do you have any objection, then, to our quitting early?

MR. LAWYER: No.

THE COURT: All right, Mr. Appleman, do as much as you can this afternoon.

MR. APPLEMAN: Then I am going to acutally try and finish the Swiss account and then save the rest for Friday morning.

[Jury present]

Q Now, Mr. Skolnick, according to your report funds were transferred from the Doctor's bank account in Barclays Bank of New York to Switzerland; is that correct, sir?

A I don't understand your question.

Q Did the Doctor transfer funds from Barclays Bank of New York to Switzerland?

A Yes.

Q Were there records retained by the bank pertaining to this transfer of funds?

A Yes.

Q Did these records contain letters written by Dr. Wolf to Barclays ordering that these funds be transferred to Switzerland?

A They were some form of documents, yes.

Q These documents were retained by Barclays Bank of New York?

A Yes.

Q Is there any other way to transfer funds from the United States to Switzerland?

MR. LAWYER: Objection.

THE COURT: I will permit it. I think the answer is pretty obvious. There are a whole lot of ways.

A There are many ways that it can be done.

Q Is one of those ways where a representative of the Swiss bank comes to the United States and picks up the money?

MR. LAWYER: Objection.

THE COURT: It seems obvious, but I'll permit it. I don't know whether it has ever been sent, but it certainly can be done.

MR. APPLEMAN: It is done, your Honor. We have had --

THE COURT: Do you know, Mr. Skolnick?

THE WITNESS: I'm not really familiar. I would only have to guess.

B76 THE COURT: Do you mean it could be done but you don't know of any instance that it was?

THE WITNESS: That is right.

Q If anyone was desirous to be secretive of funds transferred from the United States into Switzerland they would not place it, so to speak, into Macy's window with funds that are available?

MR. LAWYER: Objection.

THE COURT: Yes. I will sustain it. You can make the argument to the jury in summation.

Q Was there any attempt by the Doctor to be secretive with regard to these transfers?

MR. LAWYER: Objection.

THE COURT: Sustained.

MR. APPLEMAN: Your Honor, may I request that we recess?

THE COURT: To stop now?

MR. APPLEMAN: Yes, please.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, I think we will stop a little early today. Tomorrow is a national holiday and a very important one. It is a time for families to be together and together to consider, as from the first such holiday, the good fortune of survival for another year. We all hope that the members of the jury will have a satisfying and rewarding Thanksgiving Day. We will meet again. We will come together again here on Friday morning at 9:30 and resume the trial then.

Please bear in mind my instruction not to discuss the case among yourselves or with anybody else. Thank you very much.

[The jury left the courtroom]

THE COURT: Mr.Clerk, do you know if Friday ends the two week tour of this particular panel?

THE CLERK: I believe so.

THE COURT: Mr. Appleman, if you and the Doctor have any time over tomorrow I would be glad if you would see if you can put down sort of a short statement of your contentions that I could include in my charge to the jury. You have in mind the Government's requests to charge.

MR. APPLEMAN: Yes, your Honor.

THE COURT: Most of which I will give, and while I never charge on the evidence part of the Government's request to charge inevitably involves my explaining to the jury the bank deposits method of proof and the contentions of the Government in this type of case. It is almost a standard type of charge. I have looked at several other charges in cases which have gone to our Court of Appeals, but I would like to have some reasonably short statement so that I could say to the jury: The defendant's contention is so-and-so.

MR. APPLEMAN: That will be submitted to the Clerk.

THE COURT: As I say, I don't charge on the evidence but if I explain what the Government is contending I always like to say, as far as I can, something more than the defendant has pleaded not guilty and that raises the issue, so that if you have something that you can get up and since it is your contention that I am explaining and nothing else, I won't be too critical about it myself.

MR. APPLEMAN: Your Honor, I will get it up for Friday and hopefully Friday morning and you can have it then.

THE COURT: Doctor, how do you feel?

THE DEFENDANT: Not very well, your Honor.

THE COURT: I'm sorry, but perhaps you can rest tomorrow and hopefully be better onFriday morning.

MR. APPLEMAN: He is returning to the hospital.

THE COURT: I am glad to hear it.

[Trial recessed until 9:30 o'clock a.m. on Friday, November 23, 1973]

United States of America

-vs- 73 Cr. 486

Robert L. Wolf

New York, New York
November 23, 1973--9:40 a.m.

[Trial resumed; jury present]

B77 THE COURT: Good morning, members of the jury.

MORRIS SKOLNICK, called as a witness by the Government, having previously been sworn, testified further as follows:

CROSS-EXAMINATION [CONTINUED]

BY MR. APPLEMAN:

THE CLERK: Mr.Skolnick, you are still under oath.

Q Mr. Skolnick, during the period 1966 to 1969 was the Doctor active in trading stocks on the stock market? Did the Doctor have transactions pertaining to stock purchases or sales during that period of time?

A Yes.

Q Were there any items with regard to these purchases and sales not reported on his income tax returns for the years 1966 to 1969?

A To my knowledge, all items were reported.

Q In other words, all items pertaining to stock transactions were reported on the Doctor's returns for the years in question; is that correct?

A That is correct.

Q Did he receive any dividends during this period of time?

MR. LAWYER: Your Honor, I don't believe the witness is really competent to answer it.

THE COURT: I suppose what you mean is --

MR. APPLEMAN: Do the tax returns --

THE COURT: Do the returns show dividend income?

MR. APPLEMAN: Yes.

THE COURT: I will allow him to answer that.

Q Does the income tax return reflect dividend income?

A Yes, it does.

Q Were all such dividends reported on his return?

MR. LAWYER: Objection.

THE COURT: He couldn't possibly know that.

Q Did your investigation reveal any dividends which were not so reported on the returns?

A No.

Q The patients that testified here who paid the Doctor more than one check, was there any one patient for which all checks were found to be cashed? In other words, did any patient pay the Doctor five, six or seven checks and all such checks were found to be cashed?

MR. LAWYER: I object unless the question is clarified. Frankly, I don't understand it.

THE COURT: I think, if I can understand the question, he is trying to find out whether Mr. Skolnick knows that in the case of checks from any one particular patient all of them were cashed and currency obtained rather than deposited in the bank account.

MR. APPLEMAN: Yes.

THE COURT: Can you answer the question?

THE WITNESS: Yes. An analyses made of the patients who paid checks to the Doctor, a substantial number of these checks were cashed. Some were deposited in the Barclays Bank account.

Q But was there any one patient for which you can state that all checks paid to the Doctor were cashed?

A That is correct.

Q Do you understand the question, Mr. Skolnick?

A Yes.

Q In other words, assuming I paid the Doctor seven checks, whatever the amounts were, was there any occasion for any patient in which all of those checks which were paid from that patient to the Doctor were cashed?

A No. A good number were cashed.

Q Yes. But not all?

A Not all.

Q Not from any one patient?

A Well, I only have information from a certain number of patients. I don't know about all patients.

Q Any one patient that you have knowledge of - there were none?

A That is correct.

Q I refer to page 18 of your special agent's report. After refreshing your recollection --

MR. LAWYER: Objection.

Q Will you please refresh your recollection --

MR. LAWYER: There has been no question put to him as to which he has to refresh his recollection.

THE COURT: All right.

Q Would you please refresh your recollection as to what occurred on July 21, 1971 with regard to you telephone conversation with Mr. Edelstein?

THE COURT: I think Mr. Lawyer has a good point. Why don't you ask him the question. That will indicate whether or not he needs to have his recollection refreshed.

Q Did you have a telephone conversation with Mr. Edelstein on July 21, 1971?

A Yes, I did.

Q Did you discuss the bank accounts maintained by Dr. Wolf during that conversation?

A According to my report, I told him that the Government has knowledge that Dr. Wolf had a bank account at the Barclays Bank and also had a bank account in Switzerland in the Union Bank of Switzerland.

Q Sir, Mr. Edelstein in his testimony before the grand jury on April 13, 1973 stated --

MR. LAWYER: Your Honor, this is really improper.

THE COURT: Yes.

MR. APPLEMAN: This would show that Mr. Edelstein had no knowledge of this alleged telephone conversation.

THE COURT: Asking this witness about grand jury testimony of Mr. Edelstein is entirely improper and the objection is sustained. Now, let's go on.

Q During the course of your investigation did Mr. Edelstein relate to you how he obtained the figures with regard to the Doctor's reported income?

A Yes, he did.

Q What did he say to you, sir?

A Well, there were various conversations and, in essence, he said that the figures of income came from Dr. Wolf; that he did not himself compile these figures.

Q Did these figures come written or orally?

A They came to him in the form of schedules showing the deposits in the Chemical Bank checking account and also memoranda from Dr. Wolf relative to total receipts.

Q Did Mr. Edelstein relate to you that there was any oral information pertaining to these amounts recorded as income?

A Offhand I don't recall.

Q Will you please look at page 10 of your report? Perhaps that would refresh your memory.

A Yes. Mr. Edelstein told me that everything from Dr. Wolf with regard to income came to him in written form and not in oral form.

Q He stated that no oral information was obtained from the taxpayer in connection with his income; is that correct?

A That is what he said on one occasion.

Q I want to show you Government Exhibits 2 and 12A in Evidence. With regard to Government Exhibit 12A, can you please state what is the gross amount of deposits reflected with regard to the year 1967?

THE COURT: Is this a return?

MR. APPLEMAN: This is the work sheet, your Honor.

THE COURT: Is it expressed in terms of deposits or in terms of income?

MR. APPLEMAN: In terms of deposits, your Honor.

THE COURT: All right.

A There is a column headed "Check Deposits 1967", and it shows the figure is $50,872.16.

MR. APPLEMAN: As a point of information, the reason we didn't start with 1966 is the fact that we have no written information on the work sheets for 1966 pertaining to check deposits.

Q Will you please go to Government's Exhibit 2 in Evidence and please relate the amount of gross sales or gross receipts reported on this return on Schedule C?

A $29,212.41.

Q Will you please look thru Exhibit 12A and determine if there is any breakdown or analysis explaining how the accountant, Mr. Edelstein, took deposits of $50,872. and only report $29,212. on the return?

MR. LAWYER: Objection.

THE COURT: I will permit it, if he can do it.

A I know there is nothing stated on this sheet of that nature.

Q Is there anything stated on this work paper to indicate the method or analysis used by Mr. Edelstein to only report $29,000. on the return although he was advised that the Doctor had deposits of over $50,000.?

B78

MR. LAWYER: Same question, your Honor, repetitious.

THE COURT: I will permit it. Can you answer it, Mr. Skolnick?

THE WITNESS: If I may, to refresh my recollection, I will see if I have something in my report with regard to that.

THE COURT: You may.

THE WITNESS: If I may read from my report, I think it would clarify the situation.

THE COURT: Yes, all right.

MR. APPLEMAN: Your Honor, the question was is there anything --

THE COURT: You are asking him what he did about it. The return is in evidence. If he can answer it in this fashion I will permit it.

Go ahead, Mr. Skolnick.

THE WITNESS: "With respect to the year 1967, the taxpayer's representative submitted for inspection a letter dated March 18, 1968 from Dr. Wolf addressed to Edelstein and the reverse side of the letter is a statement that 'The following information is to be used in preparation of my 1967 income tax return' followed by a listing of figures showing as a single item income of $29,212.41; several items of deductions totaling $26,113.19; and the net profit resulting therefrom of $3,099.22. Below the listing of the figures Wolf's signature is written twice."

THE COURT: All right, next question.

Q Was the handwriting relating to the body of that letter the same as Mr. Wolf's signature?

A I am not a handwriting expert. I can't answer it professionally, but the signature on that particular letter does appear to be similar to the signature on Dr. Wolf's tax returns.

Q Does the handwriting in the body of that letter appear to be similar to the signature?

MR. LAWYER: I am perfectly willing to stipulate they do not appear to be the same.

THE COURT: All right. Isn't that satisfactory?

MR. APPLEMAN: That is, your Honor.

THE COURT: They don't appear to be the same. All right.

Q I now wish to show you Government Exhibit 13A and Government Exhibit 3 in Evidence. Referring to Government Exhibit 13A in Evidence, are there any figures relating to check deposits for Dr. Wolf for the year 1968?

A Yes, there are.

Q What is the total amount of the deposits shown on Government Exhibit 13A which is the work sheet?

A $39,510.66.

Q Referring to Government Exhibit 3 in Evidence, will you please state the total amount of gross receipts shown on Schedule C of the Doctor's return?

A $31,550.01.

Q Looking at Government Exhibit 13A, can you account for the difference in the amount shown as check deposits and the amount reported as gross receipts on the taxpayer's 1968 return?

A You mean 13A?

Q The difference between $39,510. and the $31,550.

THE WITNESS: If I may consult my report, your Honor, to clarify this?

THE COURT: Of course.

THE WITNESS: If I may read, your Honor, from my report I think I would clarify this a little.

THE COURT: All right.

A "A comparison of actual deposits of 1968 in the Chemical Bank checking account with the total deposits reflected on the taxpayer's analysis sheets for that year shows the following minor discrepancies: Actual total deposits in Chemical Bank, $39,650.66; total deposits per taxpayer's analysis sheet, $39,510.66; difference, $140. The difference of $140. results from the following error in the listing of the deposits in the taxpayer's schedule: Deposit on 2/23/68 per bank statement $484.74; amount listed on taxpayer's analysis sheet, $344.74, making an understated statement in the taxpayer's analysis of $140.

"More importantly, a reconciliation of the total deposits for 1968 per the taxpayer's analysis sheet with the data developed from the bank deposits analysis of the Chemical Bank checking account for the year 1968, fully discussed later in this report, resulted in the following:

"Total deposits per taxpayer's analysis sheet, $39,510.66; less nonprofessional funds deposited per bank deposit analysis: Mt.Sinai Hospital salary checks deposited, $7,231.65; loan repayments, $300.; returned items credited to his account, $176.95. That is a total reduction from the $3b,510.66 of $7,708.60, making a total of $31,802.06, less gross receipts per Schedule C, 1969 return of $31,550.01, making a difference of only $252.05."

Q There is a difference with regard to the amount of deposits shown on Exhibit 12A and the amount shown on the income tax return, is there not, sir?

A Yes, the difference of $252.05.

Q The reconciliation that you prepared in your report, is that shown anywhere in the accountant's work papers?

MR. LAWYER: Objection, the accountant's work papers.

THE COURT: What is in evidence here?

MR. APPLEMAN: Exhibit 13A in evidence. I'm sorry.

THE COURT: I will permit it.

A No.

Q It is not reflected in these work papers of Exhibit 13A in evidence; is that correct, sir?

A That is correct.

Q I show you Government Exhibit 14A and Government Exhibit 4 in Evidence. Referring to Government Exhibit 14A in Evidence is there any listing of check deposits in that year?

A No, there is not.

Q Is there anything pertaining to Government Exhibit 14A which would indicate the amount of income that should be reported on the Doctor's 1969 return?

A Yes, there is.

Q Is this a prescription blank of Dr. Wolf, undated, relating to that total income $37,401.05 and total deposits, $41,706.54?

A Yes, it has handwriting under it also.

Q Will you please state how this income figure of $37,401.05 was reflected on the taxpayer's return referring